



Hawaii Public Housing Authority
State of Hawaii

IFB PMB-2011-15

Invitation-For-Bids to Furnish Security Services at Kalakaua Homes,
Makua Alii, Paoakalani Under Asset Management Project 34 on the
Island of Oahu

Note: If this Invitation for Bids (IFB) was downloaded from the Hawaii Public Housing Authority's website, each interested respondent must provide the necessary contact information to the listed IFB Coordinator to be notified of any changes. For your convenience, you may download the IFB Sign-In, complete and email, fax or mail to the IFB Coordinator. The HPHA shall not be responsible for any missing addenda, clarifications, attachments or other information regarding this IFB if a proposal is submitted from an incomplete bid offer.

Issued April 18, 2011



NEIL ABERCROMBIE
GOVERNOR



DENISE M. WISE
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
HONOLULU, HAWAII 96817

Notice to Bidders
(Chapter 103D, Hawaii Revised Statutes)

INVITATION FOR BIDS (IFB) IFB PMB-2011-15

Notice is hereby given that pursuant to Chapter 103D, Hawaii Revised Statutes ("HRS"), the Hawaii Public Housing Authority (HPHA), will be accepting sealed bids for: **Security services at Kalakaua Homes, Makua Alii, and Paoakalani under Asset Management Project 34 on the island of Oahu:**

Asset Management Project 34 (AMP 34)
Kalakaua Homes (1062), 1545 Kalakaua Avenue, Honolulu, Hawaii 96826
Makua Alii (1012), 1541 Kalakaua Avenue, Honolulu, Hawaii 96826
Paoakalani (1036), 1583 Kalakaua Avenue, Honolulu, Hawaii 96826

The Invitation for Bids, Specifications, and Bid may be picked up at the HPHA's Contract and Procurement Office on Oahu located at 1002 North School Street, Building D, Honolulu, Hawaii 96817 beginning April 18, 2011.

Sealed bid offers must be received at the HPHA's Central Files Office located on Oahu at 1002 North School Street, Building D, Honolulu, Hawaii 96817 no later than 10:00 a.m. Hawaii Standard Time (HST) on May 18, 2011. Opening of bids will commence at 10:15 a.m. HST at the HPHA's Contract and Procurement Office, 1002 North School Street, Building D, Honolulu, Hawaii 96817 on May 18, 2011.

The HPHA will conduct a Pre-Bid Conference on Thursday, April 28, 2011 at the Kalakaua Homes Community Hall, 1545 Kalakaua Avenue, Honolulu, Hawaii 96826 from 9:00 a.m. – 10:00 a.m. HST with a site inspection to follow. All interested bidders are encouraged to attend.

The HPHA reserves the right to reject any or all bids and to accept the bids in whole or part in the best interest of the State.

HAWAII PUBLIC HOUSING AUTHORITY

Denise M. Wise
Executive Director



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Section 1

Administrative Overview

Section 1

Administrative Overview

I. Authority

This Invitation-for-Bids (IFB) is issued under the provisions of the Hawaii Revised Statutes, Chapter 103D, and the related administrative rules. The United States Department of Housing and Urban Development's (HUD) regulations shall apply when the Contract executed includes an allocation of Federal funds. Prospective bidders are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed bid by any prospective bidder shall constitute admission of such knowledge on the part of such prospective bidder.

II. IFB Organization

This IFB is organized into five (5) sections:

- Section 1 Administrative Overview – Provides interested bidders with an overview of the procurement process.
- Section 2 Service Specifications – Provides interested bidders with a general description of the tasks to be performed, delineates applicant responsibilities, and defines deliverables, as applicable.
- Section 3 Bid Proposal – Describes the required format and content for the bid.
- Section 4 Bid Evaluation – Describes how the bids will be evaluated by the HPHA.
- Section 5 Attachments

III. Contracting Office

The Contracting Office is responsible for overseeing the procurement and issuing the Contract resulting from this IFB. The Contracting Office is:

Hawaii Public Housing Authority
Contract and Procurement Office
1002 North School Street
Honolulu, Hawaii 96817

Telephone: (808) 832-6038 Fax: (808) 832-6039

The IFB Coordinator or his/her designated representative listed below:

Rick Sogawa
Contract and Procurement Office
1002 N. School Street, Bldg. D
Honolulu, Hawaii 96817

Telephone: (808) 832-6038 Fax: (808) 832-6039

Email: rick.t.sogawa@hawaii.gov

The HPHA reserves the right to change the IFB Coordinator without prior written notice.

The Property Management and Maintenance Services Branch (PMMSB) is the office responsible for monitoring the Contract. The designated Contract Administrator or his/her designated representative is responsible for monitoring the activities performed under the Contract and is listed as follows:

Gianna Giutron
Property Management and Maintenance Services Branch
1002 North School Street, Bldg. E
Honolulu, Hawaii 96817 Telephone: (808) 832-4684

Any changes to the Contract Administrator or his/her designated representative shall be provided in writing to the Contractor. The HPHA reserves the right to change the Contract Administrator and shall be responsible to notify the Successful Bidder of any change.

The Officer-in-Charge shall be the primary point of contact for the Successful Bidder's day-to-day operational issues and reporting requirements. No changes to the Contract shall be implemented based on verbal instructions of the Officer-in-Charge. The Officer-In-Charge for each specified location are designated as follows.

Asset Management		Complex	Office Address	Officer-In-Charge
Project #				
34		Kalakaua Homes	1545 Kalakaua Avenue Honolulu, Hawaii 96817	Janice Mizusawa Ph: (808) 832-3153
34		Makua Alii	1541 Kalakaua Avenue Honolulu, Hawaii 96817	Janice Mizusawa Ph: (808) 832-3153
34		Paoakalani	1583 Kalakaua Avenue Honolulu, Hawaii 96817	Janice Mizusawa Ph: (808) 832-3153

Any changes to the Officer-In-Charge or his/her designated representative shall be provided in writing to the Successful Bidder. The HPHA reserves the right to change the Officer-In-Charge.

IV. Procurement Timeline

Activity	Scheduled Dates
Public notice announcing IFB	April 18, 2011
Distribution of bid specs/bid form	April 18, 2011
Site inspection period	April 28 – May 17, 2011
Pre-Bid Conference	April 28, 2011

Bid submittal deadlines	May 18, 2011
Bid Opening	May 18, 2011
Notice of award	May 2011
Contract execution	June 2011
Contract start date	July 1, 2011

The HPHA reserves the right to amend or revise the timetable, without prior written notice. The Contract execution and start date are subject to the availability and release of funds. No services shall be provided prior to the execution of a Contract.

V. Pre-Bid Conference and Site Inspection

Interested bidders are strongly encouraged to attend an optional Pre-Bid Conference on Thursday, April 28, 2011 at the Kalakaua Homes Community Hall, 1541 Kalakaua Ave., Honolulu, Hawaii 96826 from 9:00 a.m. – 10:00 a.m. Hawaii Standard Time (HST).

Prior to submittal of the bid, interested bidders may visit the sites to thoroughly familiarize themselves with existing conditions. No additional compensation will be allowed by reason of any misunderstanding or error regarding site conditions/layout or work to be performed.

The HPHA will conduct a site inspection on Thursday, April 28, 2011 beginning at approximately 10:00 a.m. HST or at the conclusion of the Pre-Bid Conference. Interested bidders are strongly encouraged to attend.

Impromptu questions will be permitted at the Pre-Bid Conference and site visitation and verbal answers will be provided. Verbal answers provided by the HPHA are not binding and only intended for general direction purposes. Formal official written responses to substantive questions will be provided in writing to each interested bidder as set forth in Section VI herein below no later than . Any changes required will be issued as an addendum to the IFB.

VI. Submission of Questions

Interested bidders may submit questions to the IFB Coordinator identified in Section III of this IFB as previously listed. The deadline for submission of written questions is 4:30 p.m. HST on May 9, 2011. All written questions will receive a written response from the HPHA. The HPHA does not guarantee receipt of questions submitted via electronic mail. The HPHA's responses to the interested bidders' written questions will be sent to all interested bidders via mail, electronic mail, or facsimile no later than May 13, 2011 or as soon as practicable.

VII. Submission of Sealed Bids

A. Forms/Formats. Bid Offer forms are attached at Section 5 of this IFB. See Attachment 2.

- B. Bid Submittal.** Sealed bids must be postmarked by United States Postal Service (USPS) or hand delivered by the date and time designated in the procurement timeline. Any bid offers post-marked or received after the designated date and time shall be rejected. Note that postmarks must be by the USPS or the bid offer will be considered hand-delivered and shall be rejected if late. **Electronic mail and facsimile transmissions of the Bid Offer shall not be accepted.**

Bid offers must be submitted in a sealed envelope and properly identified as a sealed bid offer in response to this IFB. Any bid documents not properly sealed or submitted via electronic mail or facsimile shall be automatically rejected. There shall be no exceptions to this requirement.

- C. Wages and Labor Law Compliance** – Prior to entering into a Contract in excess of \$25,000, the interested bidder shall certify compliance with section 103-55, HRS, Wages, hours, and working conditions of employees of contractors performing services. Section 103-55, HRS provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Interested bidders are further advised that in the event of an increase in wages for public employees performing similar work during the period of the Contract, the Contractor shall be obligated to provide such increased wages.

Interested bidders shall complete and submit the attached Wage Certification certifying that the services required will be performed pursuant to section 103-55, HRS. See Attachment 1.

The Successful Bidder shall be further obligated to notify their employees performing work under this Contract regarding the provisions of section 103-55, HRS, and the current wage rates for public employees performing similar work. The Successful Bidder may meet this obligation by posting a written notice to this effect in the Successful Bidder's place of business in an area accessible to all employees.

Interested bidders are strongly encouraged to account for salary increases as posted by the State Department of Human Resources Development (DHRD). The **HPHA will consider requests for increases as a result of wage increases to public officers and employees during the Contract period or any option period that are not published.** At the release of this solicitation, the effective wages through July 1, 2008 for State employees performing similar work have been published by the DHRD.

- D. Confidential Information.** If an interested bidder believes that any portion of a bid contains information that should be withheld as confidential, the interested bidder shall request in writing nondisclosure of designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall

accompany the bid, be clearly marked, and shall be readily separable from the bid documents to facilitate eventual public inspection of the non-confidential sections of the bid documents. Nondisclosure of requested information is subject to Chapter 92F, HRS and is discoverable unless exempted by law. **Note that price is not considered confidential and will not be withheld.**

VIII. Discussion with Bidders Prior to Bid Submission

Discussions may be conducted with interested bidders to promote understanding of the HPHA's requirements.

IX. Opening of Bids

Upon receipt of sealed bids by the HPHA at the designated location, bids, modifications to bids, and withdrawals of bids shall be date-stamped, and whenever possible, time-stamped. All documents so received shall be held in a secure place by the HPHA and shall not be examined for evaluation purposes until the bid submittal deadline. Procurement files shall be open to public inspection after a Contract has been awarded and executed by all parties.

Sealed bids received by the due date and time shall be opened at the bid opening. Bid opening will commence at 10:15 a.m. HST on April 30, 2011 at the HPHA, Contract and Procurement Office, Bldg. D, 1002 North School Street, Honolulu, Hawaii 96817.

In the unlikely event that the HPHA has received a bid offer that was misplaced or mishandled through no fault of the interested bidder, the HPHA shall publicly open the bid offer as soon as possible, and inform all interested bidders about the additional bid offer and the bid price. Said bid offer shall only be opened if there is clear evidence that the bid offer was received by the HPHA by the posted due date, in the possession of the HPHA, and that the bid offer was not properly opened during the posted bid opening date and time.

X. Additional Materials and Documentation

Bid samples or descriptive literature should not be submitted. Any unsolicited documentation, literature, samples, or brochures will not be examined or tested, and will not be deemed to vary any of the provisions of this IFB.

XI. IFB Amendments

The HPHA reserves the right to amend this IFB at any time prior to the closing date for the final revised bids or as allowed under Section 3-122, Hawaii Administrative Rules (HAR). Interested bidders will be notified of all amendments through written communication which may include electronic mail, facsimile, or USPS.

XII. Cancellation of the Invitation for Bids

The IFB may be canceled and any or all bid offers may be rejected in whole or in part at the when it is determined by the HPHA to be in the best interests of the State.

XIII. Costs for Bid Preparation and Verification

Any costs incurred by the interested bidders in preparing or submitting a bid offer are the interested bidder's sole responsibility. Any costs incurred by the Successful Bidder prior to the execution of a Contract are not eligible for reimbursement.

Interested bidders shall ensure that the HPHA is provided with the written authorization(s) necessary to verify information provided in the interested bidder's Bid Offer Form.

XIV. Mistakes in Bids

While interested bidders are bound by their bids, circumstances may arise where a correction or withdrawal of bids is proper. An obvious mistake in a bid may be corrected or withdrawn, or waived by the interested bidder to the extent that it is not contrary to the best interest of the HPHA or to the fair treatment of other interested bidders. Mistakes in bids shall be handled as provided for in Section 3-122, HAR.

XV. Rejection of Bids

The HPHA reserves the right to consider as acceptable only those bids submitted in accordance with all requirements set forth in this IFB and which demonstrate an understanding of the service specifications. Any bid offering any other set of terms and conditions contradictory to those included in this IFB may be rejected without further notice.

A bid offer may be automatically rejected if it is:

1. Unreasonable in Price. A bid offer is unreasonable in price, if the bid price when compared with price submissions of other prospective bidders, prior Contract prices, and/or prices available on the open market is grossly unbalanced it is determined to be unreasonable in price, including not only the total price of the bid offer, but the prices for individual items as well; or
2. Materially unbalanced. A bid offer is materially unbalanced, if there is a reasonable doubt that the bid offer would result in the lowest overall cost, even though it is the lowest bid offer, or the bid offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment. An example of a materially unbalanced bid is one where the bidding is at a very high price for the first item and extremely low for subsequent items.

Any bid offer shall be determined non-responsive, if submitted in a manner which alters the bid offer form or does not conform to the format and instructions provided.

XVI. Notice of Award

An award shall be made to the responsive and responsible bidder submitting the lowest total bid price for the initial twelve (12) month period, option year one (1) and option year two (2).

An award, if made shall be as follows:

1. Awarded to the responsible and responsive Bidder submitting the lowest total bid price for the initial 12-month period ending June 30, 2012 and option year one (1) and option year two (2) located on page 3 of the Bid Offer Form. See Attachment 2. Interested bidders must submit a bid for regular security hours for each site listed in each group to be considered responsive. The award of the initial 12-month Contract period shall not be deemed a commitment on the part of the HPHA to automatically exercise the two (2) additional 12-month option periods; and
2. In the case of a tie, the bid shall be awarded to the present Contractor providing it is one of the tied bidders and whose previous business and/or performance indicate that it was responsible. If the present Contractor is not a tied bidder, the bid award shall be by the flip of a coin or some other random means of selection.

Any Contract arising out of this solicitation is subject to the approval of the Department of the Attorney General as to form, and to all further approvals as required by statute, regulation, rule, order or other directive.

No work is to be undertaken by the Successful Bidder prior to the Contract start date of July 1, 2011. The HPHA is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the Successful Bidder prior to the Contract start date.

The Successful Bidder shall produce documents to the procurement officer to demonstrate compliance with the Reference Responsibility of Bidder in Section 3-122-112, HAR. The Successful Bidder receiving an award shall be required to enter into a formal written Contract with the HPHA. The general conditions of the Contract are attached and service specifications are included herein. See Attachments 10 and 11.

XVII. Protests

An unsuccessful bidder may protest the solicitation or award of services only for a serious violation of procurement policies and operational procedures. Only the following matters may be protested:

- (1) A state purchasing agency's failure to follow procedures established by Chapter 103D, HRS.
- (2) A state purchasing agency's failure to follow any rule established by Chapter 103D, HRS.
- (3) A state purchasing agency's failure to follow any procedure, requirement, or evaluation criterion in a request for proposals issued by the state purchasing agency.

The Notice of Protest shall be mailed by USPS or hand delivered to the head of the State Contracting Office conducting the protested procurement and the Procurement Officer who is conducting the procurement (as indicated below) within five (5) working days of the postmark of the Notice of Non-Award sent to the protestor; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the Contract. Delivery services other than USPS shall be considered hand deliveries and considered submitted on the date of actual receipt by the State Contracting Office.

Head of State Contracting Office		Procurement Officer	
Name:	Denise M. Wise	Name:	Rick Sogawa
Title:	Executive Director	Title:	Acting Procurement Officer
Mailing Address:	P.O. Box 17907 Honolulu, Hawaii 96817	Mailing Address:	P.O. Box 17907 Honolulu, Hawaii 96817
Business Address:	1002 North School Street Honolulu, Hawaii 96817	Business Address:	1002 North School Street Honolulu, Hawaii 96817

XVIII. Availability of Funds

The award of a Contract and any allowed extension thereof, are subject to allotments made by the Director of Finance, State of Hawaii, pursuant to Chapter 37, HRS, and/or appropriation by the United States Congress and is subject to the availability and allocation by the State Legislature and/or the United States Department of Housing and Urban Development. The HPHA shall retain the authority to cancel an award and/or not exercise the option period due to the lack of available funds.

Nothing in this IFB shall be construed to obligate the State of Hawaii or the HPHA to pay for services at Federal low income public housing complexes with State funds allocated for purposes other than security services.

XIX. Monitoring and Evaluation

The Successful Bidder's performance of the Contract will be monitored and evaluated by the Officer-In-Charge and the Contract Administrator. The HPHA shall provide the

Successful Bidder with a copy of all monitoring reports for their information and necessary corrective action.

Failure to comply with all material terms of the Contract may be cause for suspension or termination as provided in the general conditions. The Successful Bidder may be required to submit additional written reports, including a corrective action plan, in response to monitoring conducted by the HPHA. These additional reports shall not be considered a change to the scope of work of the Contract, but shall continue for the duration of time as deemed necessary by the HPHA.

XX. General and Special Conditions of Contract

The general conditions of the Contract are included herein as an attachment. The State's general conditions set forth in Attachment 10, may also be found on the SPO website at www.spo.hawaii.gov.

Any necessary Special Conditions may be imposed under the Contract by the HPHA. In the case of a conflict between the special conditions and the general conditions, the special conditions shall apply.

The HPHA reserves the right to make small or major modifications to the quantity of items or reporting requirements contingent upon unforeseen conditions.

XXI. Cost Principles

The HPHA shall utilize standard cost principles at Section 3-123 HAR, which are available on the State Procurement Office website. Nothing in this section shall be construed to create an exemption from any cost principle arising under State and Federal law.

(END OF SECTION)

Section 2

Specifications

Section 2 Specifications

I. Introduction

A. Purpose or need

The Hawaii State Legislature established the HPHA under Chapter 356D, HRS. The HPHA consolidates all state low income housing functions and is administratively attached to the Department of Human Services. The HPHA is a public body and a body corporate and politic. The HPHA's role is to address the housing needs of low income families in Hawaii. The HPHA seeks to procure security services to meet the agency's goal of providing safe, sanitary, and decent housing.

The purpose of this IFB is to competitively procure security services to be provided on a regular schedule to the Federal Low Income Public Housing complexes under Asset Management Project 34 – Kalakaua Homes, Makua Alii, and Paoakalani located on the island of Oahu.

B. Area of Service

The Successful Bidder shall be required to certify that it is capable of providing services to all complexes during the primary contract period and the option period(s), if exercised. The complexes are as listed below:

Asset Mgmt

Project	Project & Address
34	Kalakaua Homes, 1545 Kalakaua Ave., Honolulu, HI 96826
34	Makua Alii, 1541 Kalakaua Ave., Honolulu, HI 96826
34	Paoakalani, 1583 Kalakaua Ave., Honolulu, HI 96826

C. Funding source and period of availability

Funds are subject to appropriation by the State's Director of Finance and/or United States Congress and allocation by the Governor, State Legislature and/or the United States Department of Housing and Urban Development. Funding and period of availability may change upon notice to the HPHA.

It is understood that no award shall not be binding unless the HPHA and/or the State Comptroller indicate that there is available an unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract. Any Contract entered into as a result of this IFB is binding only to the extent that funds are certified as available and that the availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special

fund revenues.

If there should be insufficient funds for any portion of the remaining Contract period beyond the initial 12-month period ending June 30, 2012, the HPHA may terminate the Contract or revise the amount/quantity of services required without penalty. Services will be reduced or rescheduled at the same bid price.

The HPHA reserves the right to pay for services, charges for special events, emergency calls, administrative or judicial hearings or other schedule changes using available State or Federal sources. Any additional services purchased under the terms of the contract resulting from this IFB shall be at the same or similar contracted rates.

Any use of Federal funds may require the prior written approval of the U.S. Department of Housing and Urban Development.

II. General Requirements

A. Specific requirements

1. The Successful Bidder shall comply with the Chapter 103D, HRS, Cost Principles for Purchase of Goods and Services and applicable HUD rules. The Successful Bidder shall also comply with applicable HUD rules at Handbook No. 2210.18.
2. The Successful Bidder must have no outstanding balances owing to the HPHA. Exceptions may be granted by the Executive Director of the HPHA for debts recently acquired and for debts which have a repayment plan approved by the Executive Director of the HPHA.
3. Interested bidders must be in good standing with the Department of Commerce and Consumer Affairs and submit a certificate to the HPHA with the Bid.

To obtain a *Certificate of Good Standing* go online to www.hawaii.gov/dcca/areas/breg and follow the prompt instructions. To register or to obtain a "Certificate of Good Standing" by phone, call (808) 586-2727 (M-F 7:45 to 4:30 HST). The "Certificate of Good Standing" is valid for six (6) months from date of issue and must be valid on the date it is received by the HPHA. Interested bidders are advised that there are costs associated with registering and obtaining a "Certificate of Good Standing" from the DCCA.

4. Pursuant to section 103D-328, Haw. Rev. Stat., the Successful Bidder shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS)

prior to execution of an agreement. The certificate is valid for six (6) months from the most recent approval stamp date on the certificate. The certificate must be valid on the date it is received by the HPHA and until the Contract is fully executed by both parties.

The tax clearance certificate can be obtained from the State of Hawaii, DOTAX. The *Tax Clearance Application Form A-6 (Rev. 2003)* is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX

Website: http://www.hawaii.gov/tax/a1_1alphalist.html

Tel: (808) 587-7527

The application for the clearance is the responsibility of the Successful Bidder, and must be submitted directly to the DOTAX or IRS and not to the purchasing agency for processing.

5. Pursuant to section 103D-310(c), HRS, the interested bidder shall be required to submit an approved certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the HPHA.

The certificate of compliance may be obtained on the State of Hawaii, *DLIR APPLICATIONS FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR, Form LIR#2*. It is available at www.dlir.state.hi.us/LIR#27, or at the neighbor island DLIR District Offices. The DLIR will return the form to the Successful Bidder, who in turn shall submit it to the HPHA.

The application for the certificate is the responsibility of the Successful Bidder, and must be submitted directly to the DLIR and not to the HPHA for processing.

However, instead of separately applying for these certificates at the various state/federal agencies, the HPHA recommends that interested bidders use the Hawaii Compliance Express (HCE), which allows business to register online through a simple wizard interface at:

<http://vendors.ehawaii.gov/hce/splash/welcome.html>

The HCE provides the applicant with a "Certificate of Vendor Compliance" with current compliance status as of the issuance date, accepted for both contracting purposes and final payment. Interested bidders that elect to use the new HCE services will be required to pay any annual fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC).

6. The Successful Bidder shall maintain insurance acceptable to the HPHA in

full force and effect throughout the term of this Contract. The policies of insurance maintained by the Successful Bidder shall provide the following minimum insurance coverage.

<u>Coverage</u>	<u>Limit</u>
General Liability Insurance (occurrence form)	\$2,000,000.00 combined single limit per occurrence for bodily injury and property damage.
Automobile Insurance covering all owned, non-owned and hired automobiles.	Bodily injury liability limits of <u>\$1,000,000.00</u> each person and <u>\$1,000,000.00</u> per accident and property damage liability limits of <u>\$1,000,000.00</u> per accident; OR Combined single limit of \$2,000,000.00
Workers Compensation as required by laws of the State of Hawaii.	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the Successful Bidder and to all employees of sub-contractors in case any sub-contractor fails to provide adequate similar protection for all his employees.

A certificate of insurance evidencing such insurance is required prior to commencement of services. The insurance policy required by this Contract shall contain the following clauses:

- (a) "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Hawaii Public Housing Authority (HPHA), Property Management and Maintenance Branch, 1002 N. School Street, Bldg E, Honolulu, Hawaii 96817."
- (b) "The State of Hawaii, the HPHA, its elected and appointed officials, officers, and employees are added as additional insured with respect to operations performed for the State of Hawaii and HPHA."
- (c) "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including all Supplemental Contract(s).

The Successful Bidder agrees to provide the HPHA, before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the HPHA that

the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the HPHA during the entire term of this Contract. Upon request by the HPHA, the Successful Bidder shall furnish a copy of the policy or policies.

Failure of the Successful Bidder to provide and keep in force such insurance shall be regarded as material default under this Contract. The HPHA shall be entitled to exercise any or all of the remedies provided in this Contract for such default of the Successful Bidder.

The procuring of such required policy or policies of insurance shall not be construed to limit the Successful Bidder's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract.

Notwithstanding said policy or policies of insurance, the Successful Bidder shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.

The Successful Bidder shall notify the HPHA in writing of any cancellation or change in provisions thirty calendar days prior to the effective date of such cancellation or change.

The HPHA is a self insured State agency. The Successful Bidder's insurance shall be primary. Any insurance maintained by the State of Hawaii shall apply in excess of, and shall not contribute with, insurance provided by the Successful Bidder.

7. Interested bidders are advised that if awarded a Contract under this solicitation, the Successful Bidder shall, upon award of the Contract, furnish proof of compliance with the requirements of section 3-122-112, HAR:
 - Chapter 237, HRS, tax clearance;
 - Chapter 383, HRS, unemployment insurance;
 - Chapter 386, HRS, workers' compensation;
 - Chapter 392, HRS, temporary disability insurance;
 - Chapter 393, HRS, prepaid health care; and
 - One of the following:
 - i. The Successful Bidder shall be registered and incorporated or organized under the laws of the State (hereinafter referred to as a "Hawaii business"); or
Hawaii business. A business entity referred to as a "Hawaii business" is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, the Successful Bidder shall submit a CERTIFICATE OF GOOD STANDING issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A Hawaii business that is a sole proprietorship, however, is not required to register with the BREG,

and therefore not required to submit the certificate. A Successful Bidder's status as sole proprietor or other business entity and its business street address indicated on the Successful Bidder Form page 1 will be used to confirm that the Successful Bidder is a Hawaii business.

- ii. The Successful Bidder shall be registered to do business in the State. (hereinafter referred to as a "compliant non-Hawaii business").

Compliant non-Hawaii business. A business entity referred to as a "compliant non-Hawaii business," is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State. As evidence of compliance, the Successful Bidder shall submit a *CERTIFICATE OF GOOD STANDING*.

The above certificates should be applied for and submitted to the HPHA as stated in this IFB. If a valid certificate is not submitted on a timely basis for award of a Contract, a bid otherwise responsive and responsible may not receive the award.

- 8. No performance or payment bond is required.
- 9. During the performance of this Contract, the Successful Bidder agrees not to discriminate against any employee or applicant for employment in compliance with State, Federal and local laws. Such actions shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Successful Bidder shall insert similar provisions in all subcontracts.
- 10. The Successful Bidder shall have a permanent office on the island of Oahu from where it conducts business and where it will be accessible to telephone calls for complaints or requests that need immediate attention. An answering service is not acceptable. A permanent office location and phone number shall be stated on the interested bidder's bid.

B. Single or multiple contracts to be awarded

☒ Single ☐ Multiple ☐ Single & Multiple

C. Single or multi-term contracts to be awarded

☒ Single term (≤ 2 yrs) ☐ Multi-term (> 2 yrs.)

Initial term of contract:	12 months
Length of each extension:	Up to 12 months (may be less than 12 months when it is in the best interest of the State)
Maximum length of contract:	Up to 36 months

The initial period shall commence on the Contract start date. The following conditions must be met for an extension:

- The Successful Bidder experienced cost savings and has unexpended funds available that can be used to provide additional services; or
- The HPHA determines there is an ongoing need for the services and has funds to extend services up to 24-months but not to exceed 12-months for any given period. Contract extensions shall be awarded at the same or comparable rates as the Primary Contract. Exceptions shall be granted upon satisfactory justification such as increase in cost of services or cost of living increase as provided herein; and
- A Supplemental Contract must be executed prior to expiration of the Primary Contract; and
- The Contractor must obtain HPHA approval in writing and a notice to proceed with the extension; and
- The necessary State and/or Federal funds are available and have been allotted for an extension; and
- The HPHA may be required to obtain HUD approval if HUD federal funds are to be used; and
- The HPHA has determined that the Successful Bidder has satisfactorily provided services over the current Contract term.

The Primary Contract is being executed for a 12-month period beginning July 1, 2011 and ending on June 30, 2012.

The option to extend the Contract will be at the sole discretion of the HPHA. The Contract may be extended without the necessity of rebidding at the same rates as proposed in the original bid, unless price adjustments are made and approved as provided herein.

The Successful Bidder shall provide the requested insurance information and a completed wage certificate. The Successful Bidder shall pay the State of Hawaii general excise tax and all other applicable taxes.

D. Statutory Requirements of Section 103-55, HRS

Interested bidders shall complete and submit the attached wage certification by which the interested bidder certifies that the services required will be performed pursuant to section 103-55, HRS. See Attachment 1.

Interested bidders are advised that section 103-55, HRS, provides that the services to be performed shall be performed by employees paid at wages not less than wages

paid to public officers and employees for similar work. Interested bidders are further advised that in the event of an increase in wage rates to public employees performing similar work during the Contract period, the Contractor will be obligated to provide wages no less than those increased wages.

The HPHA has determined that work to be done under this Contract is similar to a Security Officer I (BU 03/SR-13) at entry level. At the release of this IFB the current prevailing basic hourly wage is \$15.01 and only wages up to 7/1/08 are known.

E. Bid Price

The total bid price per hour shall be the all inclusive hourly cost to the HPHA (including all applicable taxes) for providing the services specified. The bid price per hour shall be applicable to security services provided during and after work hours. The HPHA is not responsible for and shall not pay overtime pay resulting from the Successful Bidder's scheduling of employees. Interested bidders should account for any published wage increases in their bid offer. The State shall not approve requests for contract adjustments due to wage increase during the term of the contract that are known. It is the sole responsibility of the Successful Bidder to comply with section 103-55, HRS.

The interested bidder's bid price shall include all administrative and personnel costs and any increase in costs for benefits required by law that are automatically increased as a result of increase wages, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid public health insurance.

The successful bid shall be determined on the total bid price for regular security officer hours for the 12-month period ending June 30, 2012, option year 1 and option year 2.

F. Contract Price Adjustment Due to Increase in State Wages

At the release of this bid solicitation, the effective wages through July 1, 2008 for State employees performing similar work are known. If wages increase after the execution of the Contract, the Successful Bidder may request an increase in contract price in order to correspondingly increase the wages of Bidder's employees performing the work, including any increase in costs for benefits required by law that are automatically increased as a result of increased wages, such as federal old age benefits, workers' compensation, temporary disability insurance, unemployment insurance, and prepaid health insurance.

The Successful Bidder shall not be paid for any reimbursement of retroactive pay negotiated by the State. The Successful Bidder's request for the increase must meet the following criteria:

1. At the time of bidding, if the Successful Bidder's hourly wage rate is greater than the prevailing State wage, the Successful Bidder's requests for increase will not be considered.
2. At the time of the request, the Successful Bidder must or must have provided documentation to show that it is in compliance with Section 103-55, HRS, that its employees are being paid no less than the known wage of the State position listed herein. Documentation shall include the employees payroll records and a statement that the employees are being utilized for this Contract.
3. Request for an increase must be made in writing to the HPHA on a timely basis:
 - i. Request for increase for the initial Contract period must be made as soon as practicable after the State wage agreements are made public. Approved request will be retroactive to the date of increase for the State employees with adequate documentation that the Successful Bidder provided its employees a wage increase.
 - ii. Request for increase for an option period of the Contract must be made prior to the start of the option period. The Successful Bidder is to call the Contract Administrator listed in Section 1 of this Information For Bids to obtain the current wage information or download the information from the Department of Human Resource Development's website at the following address:

http://www.hawaii.gov/hrd/main/HRDInfoCentral/DocCentral/SalarySchedules/BU03_BU04

G. Price Adjustment by the State

The Successful Bidder shall agree to make changes to the security schedules, when requested by the HPHA, if there is a need for an increase/decrease in security that are due to circumstances that cannot be predicted at the time of this IFB. Changes to the security schedule may include an increase/decrease in the number of hours per day and/or an increase/decrease in the number of security personnel per day.

Appearing at Administrative or Judicial Hearings. The Successful Bidder agrees that security personnel shall appear at administrative or judicial proceedings to provide testimony, when requested by the Officer-In-Charge. The bid price per hour for appearing for administrative or judicial hearings shall not exceed the bid price per hour for regularly scheduled security services. At the time of this solicitation, the HPHA anticipates approximately 20 hours per period. The projected number of administrative or judicial hearing hours is estimated. This does not mean to imply that the HPHA will utilize these definite amounts. The HPHA reserves the right to request/require additional hours at the same bid price.

Charges for administrative and/or judicial hearings hours shall be submitted on a separate invoice and will be paid out through other means such as State purchase order.

Emergency Calls. The Successful Bidder agrees to make unscheduled changes to security changes, when requested by the Officer-In-Charge in emergency situations. Changes to the security schedule increased number of hours per day or number of security personnel on an emergency basis.

The bid price per hour for emergency calls shall no exceed the bid price per hour for regularly scheduled security services at a rate higher than 1.5 times the regular rate. A bid offer for emergency hours that is submitted at higher than 1.5 times the regular rate shall be considered non-responsive. At the time of this solicitation, the HPHA anticipates approximately 20 emergency call hours per period. This does not imply that the HPHA will utilize these definite amounts.

Charges for emergency hours shall be submitted on a separate invoice and will be paid out through other means such as State purchase order.

III. Scope of Work

Work included in this Contract shall consist of furnishing and paying for labor, equipment, supplies and all related administrative and personnel costs, as necessary, in PROVIDING SECURITY SERVICES AT KALAKAUA HOMES, MAKUA ALII, AND PAOKALANI UNDER ASSET MANAGEMENT PROJECT 34 ON THE ISLAND OF OAHU, in accordance with these provisions, the specifications, General Conditions, and Procedural Requirements, included and/or referenced in this Invitation For Bids dated April 18, 2011.

A. Service Activities (Minimum and/or mandatory tasks and responsibilities)

1. The Successful Bidder shall provide one (1) security officer to conduct a roving patrol. Services shall include:
 - a. Roving patrol tours seven (7) days a week including State holidays. The tentative work schedule shall be as follows:

Monday through Friday (One (1) security officer/shift)
6:00 p.m. – 6:00 a.m. (12 hours)

Saturday and Sunday (One (1) security officer/shift)
6:00 p.m. – 5:00 a.m. (11 hours)

State Holidays (One (1) security officer/shift)
24 hours a day

- b. Conduct a minimum of three (3) complete rounds of all administrative and community facilities, residential buildings, stairwells, parking lots, common areas, refuse areas and entire grounds per shift with at least one (1) round per every four (4) hours following a pre-approved plan. Number of rounds will increase as requested by the Officer-In-Charge. Unusual situations which would alter the number of rounds shall be recorded in a log book. Any incidents of damages shall be reported to the Officer-In-Charge.
 - c. The Successful Bidder shall provide a Watchman Recording Device, Detex or equal and up to 36 check points which will control and monitor the rounds. The Successful Bidder shall be responsible for all costs and maintenance of the recording device. The HPHA reserves the right to change the locations or increase the number of check points due to unforeseen circumstances such as emergency situations or crime hot spots.
2. The Successful Bidder shall also provide the following services at all sites and during any option period:
- a. Investigate all disturbances and incidents that were observed or reported. Endeavor to abate nuisances and disturbances when possible, using tact and judgment to prevent or minimize disorder, quell disturbances and maintain law and order. Investigation and follow up shall include, but are not limited to:
 - i. Be alert for suspicious persons and/or vehicles, vandalism to the HPHA property, buildings, and parking areas and resident's property.
 - ii. Report all fires to the Honolulu Fire Department and site management.
 - iii. Enforce project rules and regulations which include but are not limited to drinking alcoholic beverages in common areas, curfew, loitering, and disturbances.
 - iv. Enforce traffic and speed limit signs.
 - v. Use tact and judgment to prevent disorder, quell disturbances and maintain law and order.
3. Determine the need for and summon state/federal law enforcement when intervention or arrest is necessary. Cooperate with and assist the State/Federal law enforcement if necessary and testify in court or administrative hearings when required:
- a. Monitor parked vehicles on the project premises and initiate action to tow vehicles from the project as stated in the post orders. Conduct visual inspection of parking areas for current parking decals and suspicious activities.

- b. The Successful Bidder may act on behalf of the Officer-In-Charge to issue a trespass warning, either verbally or in writing as instructed by the Officer-In-Charge, where deemed appropriate. The Successful bidder shall cooperate with the Honolulu Police Department pertaining to issuance and/or enforcement of trespass notices. The Officer-In-Charge shall provide guidelines to the Successful Bidder on issuance of trespass warnings.
- c. Maintain confidentiality of all documents viewed or information gathered during the performance of his/her duties, including discussing with the residents the details of incidents on property without the express consent of the Officer-In-Charge.
- d. Cooperate with local law enforcement on crime and drug prevention issues in and around surrounding project site.

4. Emergency Calls

The Successful Bidder agrees to make unscheduled changes to security schedules, when requested by the Officer-In-Charge in emergency situations or if the Officer-In-Charge anticipates the need for increased security that are due to circumstances that cannot be predicted at the time of this IFB. Changes to the security schedule may include increased number of hours per day or number of security personnel on an emergency basis.

At the time of this solicitation, the HPHA anticipates approximately 20 emergency call hours per period. The projected number of emergency call hours are estimates and does not mean to imply that the HPHA will utilize these definite amounts.

5. Report Requirements

- a. Submit written reports of incidents and follow up action taken to the Officer-In-Charge or his/her designated representative.
- b. Prepare and submit incident reports to the HPHA, covering in detail all disturbances, incidents and violations of the HPHA or site rules and regulations that were observed or reported during each daily tour of duty or other appropriate reports as requested. Such reports shall contain all pertinent facts available and the names of all persons involved and unit numbers and shall be in a format to be specified by HPHA. Copies of the incident reports shall be delivered daily to the Officer-In-Charge and Contract Administrator or his/her designated representative.

- c. Prepare and submit daily printout of Watchman Recording Device, Detex, or equal of check points on a bi-weekly basis to the Contract Administrator.

6. Equipment Requirements

- a. All Security Officers must be uniformed without sidearms but may be provided with crowd dispersing devices as necessary.
- b. Provide each Security Officer with a cellular phone or other appropriate means of communication, digital or Polaroid camera and supplies, and flashlight.
- c. The Successful Bidder will also provide the security supervisor/dispatcher with a cellular phone or other appropriate means of communication. The Successful Bidder shall ensure that the tenants will have access to a direct line or other appropriate means to the Security Officers for emergencies. The Successful Bidder may post a central dispatch number for tenants to contact.
- d. The Successful Bidder will be responsible for all equipment costs and maintenance of the cellular phone and/or other appropriate means of communication.

7. Applicable Vehicle Requirements

- a. All vehicles may be subject to periodic inspection by the State. All vehicles must meet and comply with any and all applicable Rules and Regulations prescribed by the City & County of Honolulu, the State of Hawaii, and the U.S. Government.
- b. Any vehicle failing to meet the safety standards or found to be mechanically unsafe shall be removed from service and repaired. Any refusal to correct or repair discrepancies shall result in termination of the contract.

8. Facilities

The HPHA shall provide restroom facilities within the complexes to be served and may provide office space which will include electricity. The Successful Bidder shall be responsible for the daily upkeep of assigned space(s). The Successful Bidder shall also be responsible for any damage to the facilities caused by the Successful Bidder's personnel.

B. Management Requirements & Qualifications (Minimum requirements)

1. Personnel

The Successful Bidder shall ensure that all personnel meet minimum qualifications, including licensing and have at least two (2) years relevant experience in law enforcement and/or security.

- a. The Successful Bidder shall employ sufficient personnel at all times for performing the work in the manner and time required by these specifications and any subsequent post orders. The Successful Bidder shall maintain and implement a plan to ensure minimal disruption of services due to staff vacancies or changes.
- b. The Successful Bidder shall be solely responsible for the behavior and conduct of their employees or agents on the HPHA property and shall instruct Security Personnel to fully cooperate with the Officer-In-Charge. Security Personnel shall refrain from socializing or fraternizing with the residents of the sites while on-duty.
- c. Security Personnel shall not enter any occupied dwelling unit, except in the case of emergency or with the consent of the HPHA, the Officer-In-Charge or his/her designated representative.
- d. The Successful Bidder agrees to remove any of its employees from servicing or providing services to the HPHA, upon request in writing by the Officer-In-Charge. At the request of HPHA, the Successful Bidder shall remove forthwith and shall not employ in any portion of the contracted work, any person who, in the opinion of HPHA, does not perform his/her duties and responsibilities in a proper and skillful manner or is intoxicated or disorderly or is abusive or unable to demonstrate tact and diplomacy in dealing with the public.
- e. The Successful Bidder agrees to rotate its Security Personnel among the various sites so that a different security team may be assigned to the sites from time to time to avoid potential collaboration between the security officers and residents, and to avoid any issues which may arise as a result.
- f. The Successful Bidder agrees to relieve any Security Officer if arrested for any major crime or felony, pending final resolution of the investigation. The HPHA has final authority to allow the individual to perform security duties pending investigation, resolution or conviction. The resulting conviction will disqualify the individual from performing work in any capacity under this Contract.
- g. The Successful Bidder shall ensure that no Security Officer employed

under this Contract has been convicted of selling, dealing, or using controlled substances such as crystal methamphetamine in or around any state or federal public housing under the jurisdiction of the HPHA.

- h. The Successful Bidder shall inform the Officer-In-Charge of all Security Officers employed under this Contract who is a registered sex offender.
- i. The Successful Bidder shall have a properly licensed manager to oversee the entire operation and to ensure that the services required are satisfactorily performed. All Security Officers shall be under the supervision of the Successful Bidder.
- j. Security personnel will refrain from having personal visitors and from socializing while on-duty. Unofficial telephone calls will be limited to emergencies.
- k. The Successful Bidder shall ensure that all information, documents, or materials viewed, discussed or provided to security personnel in the line of duty shall be treated as confidential. Security personnel shall refrain from providing confidential information to the tenants and the general public without express consent of the HPHA.
- l. The Successful Bidder shall select only those individuals capable of demonstrating the following:
 - i. Ability to exercise good judgment;
 - ii. Maturity in conduct and attitude;
 - iii. Ability to communicate in English and read simple instructions; and
 - iv. Courteous to members of the public and the HPHA employees, as well as tolerant in their interactions with others, well groomed and neat in appearance.
- m. Each Security Officer must maintain a satisfactory level of drug-free general health at all times to work under this contract. The following are the minimum physical requirements:
 - i. Security Officers must be able to hear at normal conversational level. A hearing aid may be used to meet this requirement.
 - ii. Security Officers must be physically able to serve a normal shift walking, standing, manning posts, using stairs or elevators, and operating motor vehicles.
 - iii. Correctable vision to 20/30 each eye.
- n. During the performance of this Contract, the Successful Bidder agrees not to discriminate against any employee or applicant for employment because of sex, race, creed, color, or national origin. The Successful Bidder will

take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to sex, race, creed, color, or national origin. Such action shall include without limitation, to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Successful Bidder shall insert provisions similar to the foregoing in all Subcontracts.

2. Administrative

- a. The Successful Bidder shall be required to attend, at a minimum, quarterly meetings with the Officer-In-Charge. The day and time to be specified by the Officer-in-Charge. Field visits will be made, if necessary.
- b. Every month the Officer-In-Charge and/or Contract Administrator will submit a report to the Successful Bidder listing any discrepancies or Contract violation(s) which need correction. These discrepancies or Contract violation(s) must be corrected by the next reporting period for payment adjustment purposes.

3. Payment

- a. Section 103-10, HRS provides that the HPHA shall have thirty calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services to make payment. For this reason, the HPHA will reject any bid submitted with a condition requiring payment within a shorter period. Further, the HPHA will reject any bid submitted with a condition requiring interest payments greater than that allowed by section 103-10, HRS as amended.
- b. The Successful Bidder shall submit a monthly invoice, one original, for services rendered to:

Hawaii Public Housing Authority
Attn: Property Management and Maintenance Services Branch
1002 N. School Street
Honolulu, HI 96817

The date of the invoice shall be the date received by the HPHA.

- c. All invoices shall reference the Contract number assigned to the Contract. Payment shall be in accordance with section 103-10, HRS, upon certification by the Officer-In-Charge or designee that the Successful Bidder has satisfactorily performed the services specified.

Payment shall be made on the basis of actual man-hours performed by the Successful Bidder. The Successful Bidder shall submit monthly invoices for payment, listing dates and man-hours of security services rendered for the previous month. All charges for any additional work shall be described, and the charges shall be computed at the contracted rate per hour on a separate invoice. The Successful Bidder shall clearly indicate any adjustments made to the billing statement for work not performed (e.g., guard fails to report for duty or reports late).

- d. The Successful Bidder shall submit invoices for payment no earlier than the first of each month, listing dates, security officer names and man-hours of guard services rendered for the previous month.
- e. For final payment, the Successful Bidder must submit a valid original tax clearance certificate "Certification of Compliance for Final Payment" (SPO Form-22). A copy of the Form is available at www.spo.hawaii.gov. Select "forms for Vendors/Contractors" from the Chapter 103D, HRS.

The Successful Bidder is required to submit a tax clearance certificate for final payment on the Contract. A tax clearance certificate, not over two (2) months old, with an original green certified copy stamp, must accompany the invoice for final payment on the Contract.

IV. Performance Monitoring & Remedies

A. Monitoring

- 1. The performance of work shall be monitored by the Officer-In-Charge and Contract Administrator. Performance will be monitored on an ongoing basis by the HPHA through desk monitoring, site inspection and/or other methods.
- 2. Should the Successful Bidder fail to comply with the requirements of the Contract, the HPHA reserves the right to engage the services of another company to perform the services, to remedy the defect or failure and to deduct such costs from monies due to the Successful Bidder or to directly assess the Successful Bidder.
- 3. In the event the Successful Bidder fails, refuses, or neglects to perform the services in accordance with the requirements of this Invitation for Bids, and the Contract, the HPHA reserves the right to purchase in the open market, a corresponding quantity of services, and to deduct this cost moneys due or that may thereafter become due the Successful Bidder. In case money due to the Successful Bidder is insufficient for the purpose, the Successful Bidder shall pay the difference upon demand by the HPHA. The HPHA may also utilize all other remedies provided under the Contract and by law and rules.

4. Failure or refusal of the Successful Bidder to perform services as required may be grounds to suspend or terminate the Contract as detailed in the general conditions.

B. Damages

1. Liquidated damages are fixed at the sum of FIFTY DOLLARS (\$50.00) for each calendar day that the Successful Bidder fails to perform in whole or in part any of its obligations in accordance with the terms of paragraph 9 of the general conditions. Liquidated damages may be deducted from any payments due or to become due to the Successful Bidder.
2. The Successful Bidder shall repair all damages caused by the Successful Bidder's equipment or employees to existing utilities and structures, such as water lines, electric conduits, sewer lines, buildings, and plantings. If such repairs are not completed within a reasonable time, the HPHA reserves the right to purchase services for the necessary repairs from the open market and to deduct all repairs costs from moneys due or may thereafter become due to the Successful Bidder. In the event money due the Successful Bidder is insufficient for the purpose, the Successful Bidder shall pay the difference upon demand by the HPHA.

C. Termination

The HPHA reserves the right to terminate any Contract without penalty for cause or convenience as provided in the General Conditions.

(END OF SECTION)

Section 3

Forms and Instructions

Section 3

Forms and Instructions

General Instructions for Completing Forms

- *Bid offers shall be submitted to the HPHA in the prescribed format outlined in this IFB*
- *No supplemental literature, brochures or other unsolicited information should be included in the bid packet.*
- *A written response is required for each item unless indicated otherwise.*
- *Bid documents, and all certifications should be completed with black ink.*

I. Bid Offer Form

The bid offer form must be completed and submitted to the HPHA by the required due date and time, and in the form prescribed by the HPHA. See Attachment 3. Electronic mail and facsimile transmissions shall not be accepted.

Interested bidders shall submit their bid offer under the interested bidder's exact legal name that is registered with the Department of Commerce and Consumer Affairs and shall indicate this exact legal name in the appropriate space on page 1 of the bid offer form. Failure to do so may delay proper execution of the Contract.

Interested bidders shall certify its ability to provide security services on July 1, 2011 or upon execution of the Contract by both parties. The HPHA reserves the right to apply liquidated damages as set forth in Section 2, Paragraph IV of the IFB for the delay in Contract execution on the part of the Successful Bidder.

The interested bidder's authorized signature shall be an original signature in ink. If the Bid Offer Form on page 1 is unsigned or the affixed signature is a facsimile or a photocopy, the bid offer shall be automatically rejected.

Interested bidder shall provide the requested insurance information and a completed wage certificate. The Successful Bidder shall pay the State of Hawaii general excise tax and all other applicable taxes.

A bid security deposit is not required for this IFB. Security costs shall indicate costs for security, including personnel costs, including benefits and necessary insurance and administrative costs, including supervisor salaries.

The successful bid shall be determined by the total bid price for regular security officer hours, special event security hours and administrative/judicial hearing security officer hours for the 12-month period ending June 30, 2012, option year one (1) and option year two (2).

The option to extend the Contract will be at the sole discretion of the HPHA and determined to be in the best interests of the State. The Contract shall be extended at the same rates as proposed in the original bid unless price adjustments are provided herein.

II. HUD Forms

A. Instructions to Offerors Non-Construction, form HUD 5369-B

The form HUD 5369-B must be signed and submitted to the HPHA with the bid form by the required due date and time, and in the form prescribed by the state purchasing agency. The certification must be signed and dated by an authorized representative. Any certification altered or modified shall not be accepted.

Form HUD 5369-B is attached to this IFB and can also be found at www.hudclips.org. See Attachment 12.

B. Certification and Representations of Offerors, form HUD 5369-C

The form HUD 5369-C must be completed and submitted to the HPHA with the bid form by the required due date and time, and in the form prescribed by the state purchasing agency. The certification must be signed and dated by an authorized representative.

Form HUD 5369-C is attached to this IFB and can also be found at www.hudclips.org. See Attachment 13.

C. General Conditions, form 5370-C

The form HUD 5370-C is attached and provided for bidder's information and reference. See Attachment 11.

III. General Conditions

The State of Hawaii's General Conditions of the Contract are attached for the interested bidder's review and information. See Attachment 10. The General Conditions shall be incorporated into the Contract with the Successful Bidder.

(END OF SECTION)

Section 4
Bid Evaluation & Award

Section 4

Bid Evaluation & Award

I. Bid Evaluation

Each bid offer will be reviewed by the HPHA. A bid offer determined to be in exact conformity of the requirements in the IFB shall be known as a “responsible bid”. Information provided in/with the bid offer that results in a determination that the interested bidder has the technical and financial capacity to deliver the goods or services shall be known as a “responsive bid”.

II. Method of Award

An award shall be made to the lowest responsible and responsive bidder’s grand total base bid price that includes the price for the initial 12-month period, option year one (1) and option year two (2). To be considered a responsive bid and eligible for an award, the interested bidder must bid on all sites for the initial 12-month period, option year one (1) and option year two (2).

The option to extend the Contract will be at the sole discretion of the HPHA. Nothing in this IFB shall be construed or interpreted to mean that the HPHA is obligated to exercise the option periods. The Contract may be extended without the necessity of rebidding at the same rates as proposed in the original bid, unless price adjustments are made and conditions are met as described in Section 2, Specifications of this IFB.

Pursuant to Chapter 3-122-35, HAR, in the event there are no responsive and responsible bids, an alternative procurement method may be used by the HPHA. The HPHA may conduct a resolicitation or an alternative procurement method.

The low bid must conform to all requirements of the IFB in order to be determined responsive.

Section 5

Attachments

- | | |
|---|--------------------------|
| 1. Wage Certificate | Due May 18, 2011 |
| 2. Bid Offer Form | Due May 18, 2011 |
| 3. Asset Management Project 34 Site Maps | For Bidder's information |
| 4. Sample Contract Based on Competitive Sealed Bid for Goods and Services (6/22/2009) | For Bidder's information |
| 5. Sample Contract – Attachment S1, Scope of Services | For Bidder's information |
| 6. Sample Contract – Attachment S2, Compensation and Payment Schedule | For Bidder's information |
| 7. Sample Contract – Attachment S3, Time of Performance | For Bidder's information |
| 8. Sample Contract – Attachment S4, Certificate of Exemption from Civil Service | For Bidder's information |
| 9. Sample Contract – Attachment S5, Special Conditions | For Bidder's information |
| 10. General Conditions, AG-008 Rev. 4/15/2009 | For Bidder's information |
| 11. General Conditions, Federal form HUD 5370-C | For Bidder's information |
| 12. Instructions to Offerors Non-Construction, form HUD 5369-B | For Bidder's information |
| 13. Certifications and Representations of Offerors, form HUD 5369-C | For Bidder's information |
| 14. Security Officer Class Specifications/Minimum Qualifications/Salary Schedule | For Bidder's information |
| 15. Sample HPHA Rental Agreement | For Bidder's information |

WAGE CERTIFICATE

SUBJECT: BID NO.: IFB PMB-2011-15

DESCRIPTION OF PROJECT

**FURNISH SECURITY SERVICES AT KALAKAUA HOMES, MAKUA
ALII AND PAOKALANI UNDER ASSET MANAGEMENT PROJECT
34 ON THE ISLAND OF OAHU.**

Pursuant to Section 103-55, Hawaii Revised Statutes (HRS.), I hereby certify that if awarded the contract is in excess of \$25,000.00 the services will be performed under the following conditions:

1. The services shall be performed by employees at wages or salaries not less than wages or salaries paid to public officers and employees doing similar work.

2. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by section 103-55, HRS.

BIDDER: _____

BY: _____
Signature of Person Authorized to Sign this Bid.

Please Print

NAME: _____

TITLE: _____

DATE: _____

IFB PMB-2011-15

SEALED BID

Hawaii Public Housing Authority
Contract and Procurement Office
1002 North School Street, Bldg. D
Honolulu, HI 96817

Dear Sir:

The undersigned has carefully read and understands the terms and conditions specified in the Sealed Invitation for Bid, Specifications and the General Conditions by reference made a part of this Bid and hereby submits the following offer to perform the work specified.

That the undersigned further understands and agrees that by submitting this Sealed Bid, 1) it is declaring its Bid is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) it is certifying that the price(s) submitted was (were) independently arrived at without collusion.

Date: _____

Telephone No.: _____

Fax No.: _____

Payment address, if other than street
address at right:

Hawaii General Excise Tax Lic. I.D. No.:

Social Security or Federal I.D. No.:

Hawaii Guard Agency License No.:

Expiration Date:

Principal Guard License Name:

Principal Guard License No.:

Respectfully Submitted,

Legal Name of Offeror

Authorized Signature (Original)

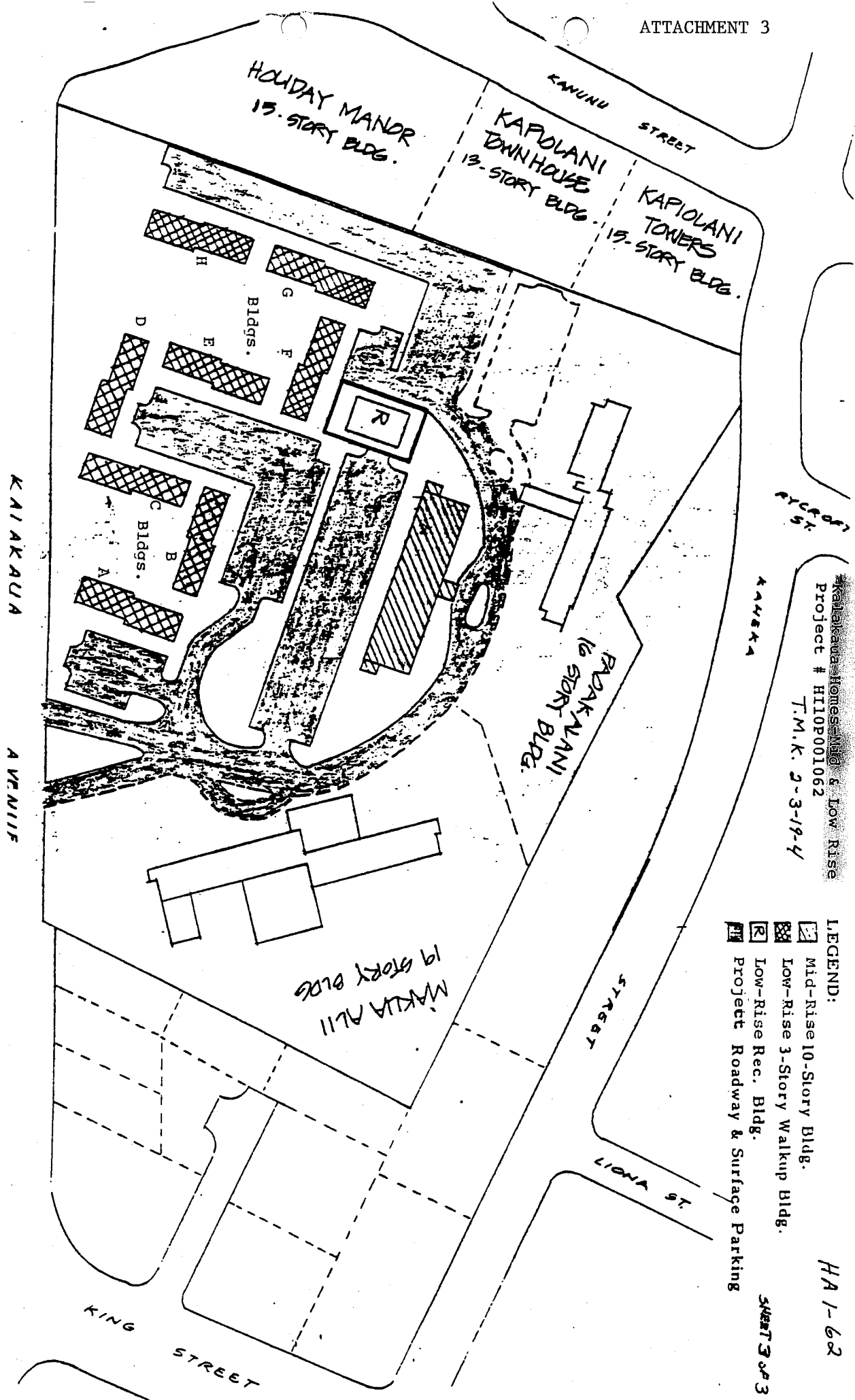
Title

Street Address

City, State, Zip Code

	Initial 12-month Period			Option Year 1			Option Year 2			Total Estimated Bid Price for the 36-month period (7/1/11 - 6/30/14)
	Estimated No. of Hours	Bid Price Per Hour	Total Estimated Bid Price	Estimated No. of Hours	Bid Price Per Hour	Total Estimated Bid Price	Estimated No. of Hours	Bid Price Per Hour	Total Estimated Bid Price	
Asset Mgmt Project 34										
1062 Kalakaua Homes										
1012 Makua Alii										
1036 Paoakalani										
1. Work schedule, duties and responsibilities listed in the IFB PMB-2011-15 and the Specifications										
Roving Patrol	4,444	x \$	= \$	4,443	x \$	= \$	4,432	x \$	= \$	\$
2. Security personnel to appear and testify at administrative and/or judicial hearing upon request as listed in IFB PMB-2011-15. Bid price per hour shall not exceed price for regular price per hour in item #1 above.	20	x \$	= \$	20	x \$	= \$	20	x \$	= \$	\$
TOTAL	4,464	x \$	= \$	4,463	x \$	= \$	4,452	x \$	= \$	\$
3. Emergency hours. Bid price per hour for emergency hours shall not exceed the regular price per hour in item #1 above by greater than 1.5 times.		\$			\$			\$		
									TOTAL	\$

The low bid shall be determined based on the TOTAL bid price for the regular security offer schedule in item #1 and security officer hours for appearing at administrative and/or judicial hearings in item #2. Emergency hours shall not be used to determine the low bid, but must conform with all requirements of the IFB in order to be determined responsive.

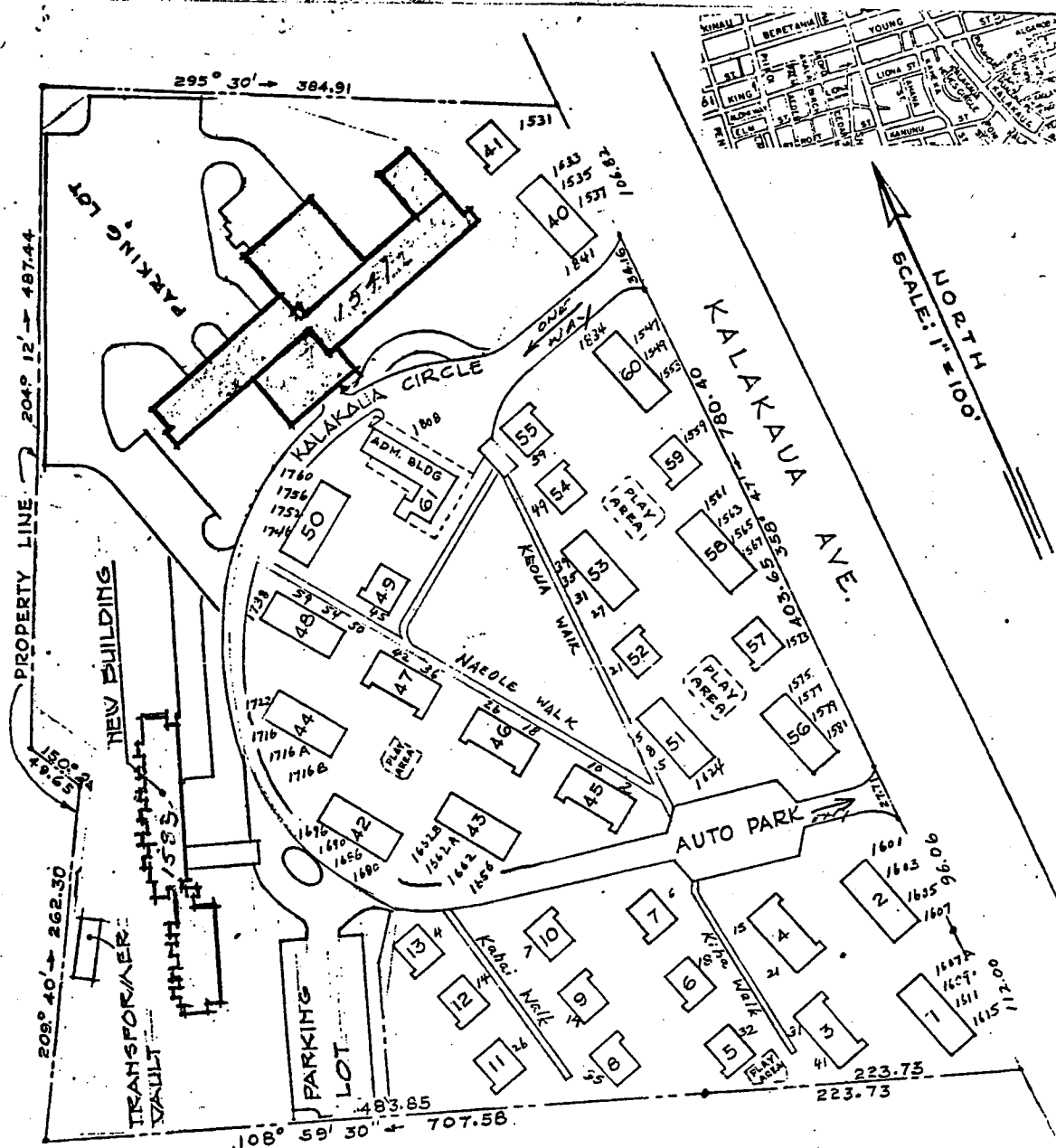


Kalaheka Homes-Mid & Low Rise
Project # H10P001062
T.M.K. 2-3-19-4

- LEGEND:
- [Hatched Box] Mid-Rise 10-Story Bldg.
 - [Cross-hatched Box] Low-Rise 3-Story Walkup Bldg.
 - [Box with 'R'] Low-Rise Rec. Bldg.
 - [Box with 'P'] Project Roadway & Surface Parking

HA 1-6-2

SHEET 3 OF 3



MAKUA ALII HA 1-12
HA 1-36 PAOAKALANI

No. in front of bldg: denote
mailing address.

T. M. K. 2-13-19:4

NOTE: AREA = 9.3 ACRES.

HAWAII HOUSING AUTHORITY
HONOLULU, HAWAII

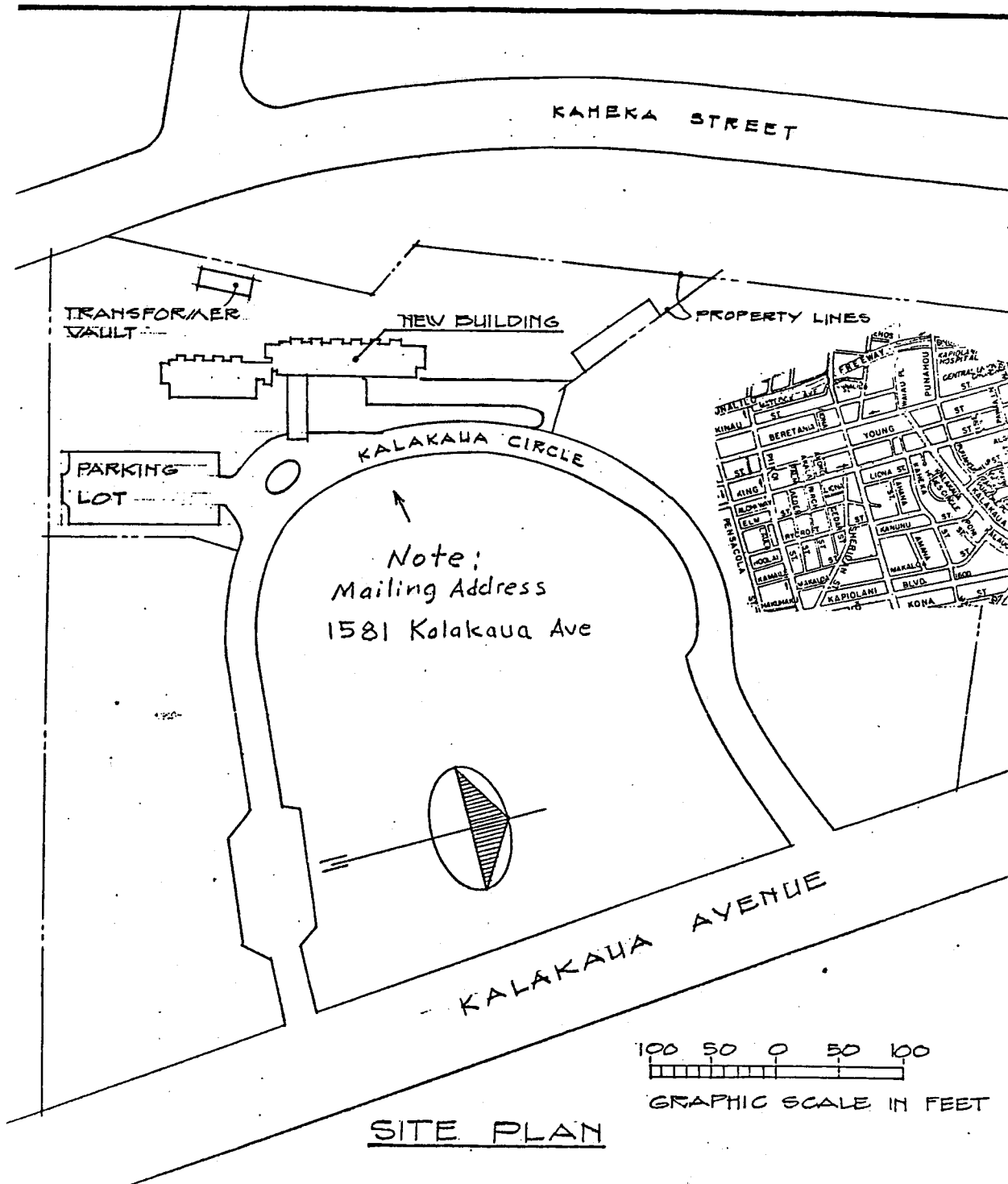
MAKUA ALII HA 1-12

PLOT PLAN

Approved: *O.K. W.* Scale: 1" = 100'
Date: 11-18-66

PLAN No. 745 REVISION: 1/17/71

T.M.K. 2-13-19:4



DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT - HOUSING
ASSISTANCE ADMINISTRATION

ACCOMPANYING PROJECT
PHOTO NUMBERS

_____ 21

DATE _____ Location: 1583 Kalakaua Ave.
Honolulu, HI

HAWAII HOUSING AUTHORITY

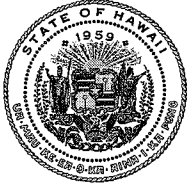
"SITE PLAN DIAGRAM"

HA-136

HIGH-RISE HOUSING
FOR THE ELDERLY
Paokalani
HONOLULU, HAWAII

LUKE, INYAMOTO & ASSOC.
INC. - ARCHITECTS

PLAN NO 994 DATE: 3/12/



STATE OF HAWAII
CONTRACT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED BIDS

This Contract, executed on the respective dates indicated below, is effective as of
July 1, 2011, between Hawaii Public Housing Authority,
(Insert name of state department, agency, board or commission)
 State of Hawaii ("STATE"), by its Executive Assistant,
(Insert title of person signing for State)
 (hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),
 whose address is 1002 North School Street, Honolulu, Hawaii 96817
 and _____
 ("CONTRACTOR"), a _____
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)
 under the laws of the State of _____, whose business address and federal
 and state taxpayer identification numbers are as follows: _____

RECITALS

- A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services, or both.
- B. The STATE has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.
- C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 5, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").
- D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation.
- E. Pursuant to Section 356D-4, HRS, the STATE
(Legal authority to enter into this Contract)
 is authorized to enter into this Contract.
- F. Money is available to fund this Contract pursuant to:
- (1) n/a
(Identify state sources)
- or (2) _____
(Identify federal sources)
- or both, in the following amounts: State \$ 0.00
 Federal \$ _____

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the Invitation for Bids number PMB-2011-15 ("IFB") and the CONTRACTOR'S accepted bid ("Bid"), both of which, even if not physically attached to this Contract, are made a part of this Contract.
2. Compensation. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Contract in a total amount not to exceed

_____ DOLLARS
(\$ _____), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☒ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of _____ DOLLARS (\$ _____).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the IFB, including all attachments and addenda; and (3) the CONTRACTOR'S Bid.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of _____ Fifty and No/100----- DOLLARS
(\$ _____ 50.00 _____) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE

(Signature)

Barbara E. Arashiro

(Print Name)

Executive Assistant

(Print Title)

(Date)

CONTRACTOR

CORPORATE SEAL
(If available)

(Name of Contractor)

(Signature)

(Print Name)

(Print Title)

(Date)

APPROVED AS TO FORM:

Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF _____)
) SS.
_____ COUNTY OF _____)

On this _____ day of _____, _____ before me appeared
_____ and _____, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
_____ of
_____, the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said
instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

(Signature)

(Print Name)

Notary Public, State of _____

My commission expires: _____

Doc. Date: _____ # Pages: _____

Notary Name: _____ Circuit _____

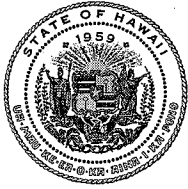
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(Notary Stamp or Seal)

Notary Signature

Date

NOTARY CERTIFICATION



STATE OF HAWAII

CONTRACTOR'S

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of _____, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is* ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

CONTRACTOR

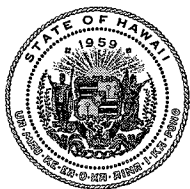
By _____
(Signature)

Print Name _____

Print Title _____

Name of Contractor _____

Date _____



Attachment - S1

STATE OF HAWAII

SCOPE OF SERVICES

Contractor:

Complexes: **Kalakaua Homes (1062)** 1545 Kalakaua Avenue, Honolulu, Hawaii 96826
Makua Alii (1012) 1541 Kalakaua Avenue, Honolulu, Hawaii 96826
Paokalani (1036) 1583 Kalakaua Avenue, Honolulu, Hawaii 96826

1. The CONTRACTOR shall provide and perform the described services in a satisfactory and proper manner as determined by the STATE and in strict accordance with the terms and conditions of this Contract and the requirements of Invitation for Bids number IFB PMB-2011-15, dated April 18, 2011. It is understood that this Contract includes IFB PMB-2011-15, attached hereto as Exhibit A and made a part hereof.
2. The CONTRACTOR shall furnish security services at the Federal low-income public housing complexes listed below:

Asset Management Project 34:

- Kalakaua Homes, 1545 Kalakaua Avenue, Honolulu, Hawaii 96826
 - Makua Alii, 1541 Kalakaua Avenue, Honolulu, Hawaii 96826
 - Paokalani, 1583 Kalakaua Avenue, Honolulu, Hawaii 96826
3. The CONTRACTOR shall provide one (1) security personnel to conduct a roving foot patrol as follows:
 - a. Roving foot patrol tours seven (7) days a week including all State holidays. The tentative work schedule shall be as follows:

Monday through Friday
6:00 p.m. – 6:00 a.m. (12 hours)

Saturday and Sunday
6:00 p.m. – 5:00 a.m. (11 hours)

State Holidays
24 hours a day
 - b. Conduct a minimum of three (3) complete rounds of all administrative and community facilities, residential buildings, stairwells, parking lots, common areas, refuse areas and entire grounds per shift with at least one (1) round per shift following a pre-approved plan. Number of rounds will increase for shifts greater than 12 hours or as requested by the Officer-In-Charge.



STATE OF HAWAII

SCOPE OF SERVICES

Unusual situations which would alter the round time shall be recorded in a log book. Any incidents of damages shall be reported to the Officer-In-Charge.

- c. The CONTRACTOR shall provide a Watchman Recording Device, Detex or equal and up to 36 check points which will control and monitor the rounds. The CONTRACTOR shall be responsible for all costs and maintenance of the recording device. The STATE reserves the right to change the locations or increase the number of check points due to unforeseen circumstances (e.g., emergency situations or crime hot spots).

4. The CONTRACTOR shall also provide the following services at all complexes:

- a. Investigate all disturbances and incidents that were observed or reported. Endeavor to abate nuisances and disturbances when possible, using tact and judgment to prevent or minimize disorder, quell disturbances and maintain law and order. Investigation and follow up shall include, but are not limited to:
 - i. Be alert for suspicious persons and/or vehicles, vandalism to STATE property, buildings, parking areas and resident's property.
 - ii. Report all fires to the Honolulu Fire Department and site management.
 - iii. Enforce project rules and regulations which include but are not limited to drinking alcoholic beverages in common areas, curfew, loitering, and disturbances.
 - iv. Enforce traffic and speed limit signs.
 - v. Use tact and judgment to prevent disorder, quell disturbances and maintain law and order.
- b. Determine the need for and summon the police when intervention or arrest is necessary. Cooperate and assist the police if necessary and testify in court or administrative hearings when required.
- c. Monitor parked vehicles on the project premises and initiate action to tow vehicles from the project as stated in the post orders. Conduct visual inspection of parking areas for current parking decals and suspicious activities.
- d. The CONTRACTOR may act on behalf of the Officer-In-Charge to issue a trespass warning, either verbally or in writing as instructed by the Officer-In-Charge, where deemed appropriate. The CONTRACTOR shall cooperate with the Honolulu Police Department pertaining to issuance and/or enforcement of trespass notices. The Officer-In-Charge shall provide guidelines to the CONTRACTOR on issuance of trespass warnings.



STATE OF HAWAII

SCOPE OF SERVICES

- e. Maintain confidentiality of all documents viewed or information gathered during the performance of his/her duties, including discussing with the residents the details of incidents on property without the express consent of the Officer-In-Charge.
- f. Cooperate with local law enforcement on crime and drug prevention issues in and around surrounding project site.
- g. Emergency Calls:

The CONTRACTOR agrees to make unscheduled changes to security schedules, when requested by the Officer-In-Charge in emergency situations or if the Officer-In-

Charge anticipates the need for increased security that are due to circumstances that cannot be predicted at the time of this CONTRACT. Changes to the security schedule may include increased number of hours per day or number of security personnel on an emergency basis.

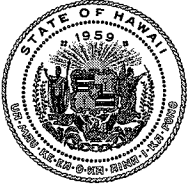
At the time of this Contract, the STATE can only approximate the number of emergency call hours per year as listed in the CONTRACTOR's bid form. The projected number of emergency call hours are estimates and does not mean to imply that the STATE will utilize these definite amounts (See Exhibit A).

5. Report Requirements

- a. Submit written reports of incidents and follow up action taken to the Officer-In-Charge or his/her designated representative.
- b. Prepare and submit incident reports to STATE, covering in detail all disturbances, incidents and violations of STATE or project regulations that were observed or reported during each daily tour of duty or other appropriate reports as requested. Such reports shall contain all pertinent facts available and the names of all persons involved and unit numbers and shall be in a format to be specified by STATE. Copies of the incident report shall be delivered daily to the Office-In-Charge or his/her designated representative.
- c. Prepare and submit daily printout of Watchman Recording Device, Detex or equal of checkpoints on a bi-weekly basis to the Contract Administrator.

6. Equipment Requirements

- a. All Security Officers must be uniformed without sidearms but may be provided with crowd dispersing devices as necessary.



STATE OF HAWAII

SCOPE OF SERVICES

- b. The CONTRACTOR shall provide each Security Officer with a cellular phone or other appropriate means of communication and appropriate gear for inclement weather.
- c. The CONTRACTOR shall provide the security supervisor/dispatcher with a cellular phone or other appropriate means of communication. Successful Bidder shall ensure that the tenants will have access to a direct line or other appropriate means to the Security Officers for emergencies. The CONTRACTOR may post a central dispatch number for tenants to Contact.
- d. Contractor will be responsible for all equipment costs and maintenance of the cellular phone and/or other appropriate means of communication.

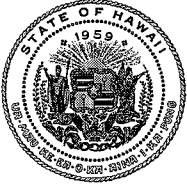
7. Facilities

The STATE shall provide restroom facilities within the sites to be served and may provide office space which will include electricity. The CONTRACTOR shall be responsible for the daily upkeep of assigned space(s). The CONTRACTOR shall also be responsible for any damage to the facilities caused by the CONTRACTOR's personnel.

B. Management Requirements & Qualifications (Minimum requirements)

1. Personnel

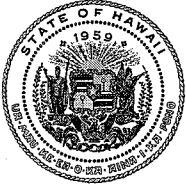
- a. The CONTRACTOR shall ensure that all personnel meet minimum qualifications, including licensing and have at least two (2) years relevant experience in law enforcement and/or security.
- b. The CONTRACTOR shall employ sufficient personnel at all times for performing the work in the manner and time required by these specifications and any subsequent post orders. The CONTRACTOR shall maintain and implement a plan to ensure minimal disruption of services due to staff vacancies or changes.
- c. The CONTRACTOR shall be solely responsible for the behavior and conduct of their employees or agents on STATE property and shall instruct security personnel to fully cooperate with the Officer-In-Charge. Security Personnel shall refrain from socializing or fraternizing with the residents of the sites while on-duty.
- d. The CONTRACTOR agrees that security personnel shall not enter any occupied dwelling unit, except in the case of emergency or with the consent of the STATE, the Officer-In-Charge or his/her designated representative.



STATE OF HAWAII

SCOPE OF SERVICES

- e. The CONTRACTOR agrees to remove any of its employees from servicing or providing services to the STATE, upon request in writing by the Officer-In-Charge. At the request of the STATE, the CONTRACTOR shall remove forthwith and shall not employ in any portion of the work, any person who, in the opinion of the STATE, does not perform his/her duties and responsibilities in a proper and skillful manner or is intoxicated or disorderly or is abusive or unable to demonstrate tact and diplomacy in dealing with the public.
- f. The CONTRACTOR agrees to rotate its security personnel among the various sites so that a different security team may be assigned to the sites from time to time to avoid potential collaboration between the security officers and residents, and to avoid any issues which may arise as a result.
- g. The CONTRACTOR agrees to relieve any security officer if arrested for any major crime or felony, pending final resolution of the investigation. The STATE has final authority to allow the individual to perform security duties pending investigation, resolution or conviction. The resulting conviction will disqualify the individual from performing work in any capacity under this Contract.
- h. The CONTRACTOR shall ensure that no security officer employed under this Contract has been convicted of selling, dealing, or using controlled substances such as crystal methamphetamine in or around any state or federal public housing under the jurisdiction of STATE.
- i. The CONTRACTOR shall inform the Officer-In-Charge of all security officers employed under this Contract who is a registered sex offender.
- j. The CONTRACTOR shall have a properly licensed manager to oversee the entire operation and to ensure that the services required are satisfactorily performed. All security officers shall be under the supervision of the CONTRACTOR.
- k. Security personnel will refrain from having personal visitors and from socializing while on-duty. Unofficial telephone calls will be limited to emergencies.
- l. The CONTRACTOR shall ensure that all information, documents, or materials viewed, discussed or provided to security personnel in the line of duty shall be treated as confidential. Security personnel shall refrain from providing confidential information to the tenants and the general public without express consent of the STATE.
- m. The CONTRACTOR shall select only those individuals capable of demonstrating the following:



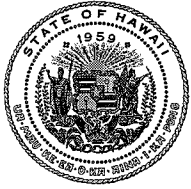
STATE OF HAWAII

SCOPE OF SERVICES

- i. Ability to exercise good judgment;
 - ii. Maturity in conduct and attitude;
 - iii. Ability to communicate in english and read simple instructions; and
 - iv. Courteous to members of the public and STATE employees, as well as tolerant in their interactions with others, well groomed and neat in appearance.
- n. Each security officer must maintain a satisfactory level of drug-free general health at all times to work under this contract. The following are the minimum physical requirements:
- i. Security officers must be able to hear at normal conversational level. A hearing aid may be used to meet this requirement.
 - ii. Security officers must be physically able to serve a normal shift walking, standing, manning posts, using stairs or elevators, and operating motor vehicles (if required).
 - iii. Correctable vision to 20/30 each eye.
- o. During the performance of this Contract, the CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of sex, race, creed, color, or national origin.
- The CONTRACTOR will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to sex, race, creed, color, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR shall insert provisions similar to the foregoing in all subcontracts.
- p. The CONTRACTOR agrees to require the relocation of security personnel from one site to another site as listed above.
- q. The CONTRACTOR understands and agrees that the STATE may require reduction or replacement of any number of contracted security personnel at any site listed above in conjunction with the use of law enforcement personnel.

1. Administrative

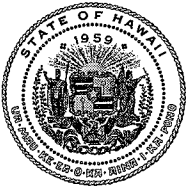
- a. The CONTRACTOR shall be required to attend quarterly meetings with the Officer-In-Charge. The day and time to be specified by the Officer-in-Charge. Field visits will be made, if necessary.



STATE OF HAWAII

SCOPE OF SERVICES

- b. Every month the Officer-In-Charge and/or Contract Administrator will submit a report to the CONTRACTOR listing any discrepancies or contract violation(s) which need correction. These discrepancies or contract violation(s) must be corrected by the next reporting period for payment adjustment purposes.



Attachment – S2

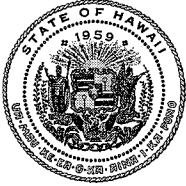
STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE**Contractor:**

Complexes: **Kalakaua Homes (1062)** 1545 Kalakaua Avenue, Honolulu, Hawaii 96826
Makua Alii (1012) 1541 Kalakaua Avenue, Honolulu, Hawaii 96826
Paokalani (1036) 1583 Kalakaua Avenue, Honolulu, Hawaii 96826

1. Subject to the availability and receipt of Federal and/or State funds, the STATE agrees to pay the CONTRACTOR for services satisfactorily performed under this Contract a sum of money not to and No/100 Dollars (\$xx,xxx.xx) for the twelve-month period as shown in the CONTRACTOR's Bid Offer Form. See Exhibit A.
2. Federal funds are subject to appropriation by the U.S. Congress and allocation by the U.S. Department of Housing and Urban Development (HUD). Funding and period of availability may change upon notice by HUD to the STATE. If there should be insufficient funds for any portion of the remaining Contract period beyond the initial twelve-month period, ending June 30, 2012, the STATE may terminate without penalty the Contract or may revise the amount/quantity of services required without penalty.
3. State funds are subject to appropriation by the State's Director of Finance and allocation by the Governor and/or State Legislature. Funding and period of availability may change upon notice by the STATE. If there should be insufficient funds for any portion of the remaining Contract period beyond the initial twelve-month period, ending June 30, 2012, the STATE may terminate without penalty the Contract or may revise the amount/quantity of services required without penalty.
4. Upon execution of this Contract, payments shall be paid in accordance with and subject to the following:
 - a. The CONTRACTOR shall submit a monthly invoice, one original and two (2) copies, for services rendered to:

Hawaii Public Housing Authority
 Attn: Property Management and Maintenance Services Branch
 1002 N. School Street
 P.O. Box 17907
 Honolulu, HI 96817
 - b. Section 103-10, HRS, provides that the STATE shall have thirty calendar days after receipt of invoice or satisfactory delivery of goods or performance of the services to make payment. The aging date of the invoice shall be the latter of the date received by the STATE.



STATE OF HAWAII

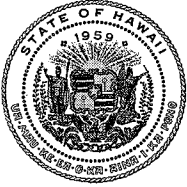
COMPENSATION AND PAYMENT SCHEDULE

- c. All invoices shall reference the Contract number assigned to this Contract. Payment shall be in accordance with Section 103-10, Hawaii Revised Statutes (HRS), upon certification by the Officer-In-Charge that the CONTRACTOR has satisfactorily performed the services specified. Payment shall be made on the basis of actual man-hours of security services performed by the CONTRACTOR. The CONTRACTOR shall submit monthly invoices for payment, listing dates and man-hours of security services rendered for the previous month. All charges for any emergency calls shall be described, and the charges shall be computed at the contracted rate per hour on a separate invoice.

The CONTRACTOR shall clearly indicate any adjustments made to the billing statement for work not performed.

- d. Once a month the Officer-In-Charge will submit a report to the CONTRACTOR listing any discrepancies or Contract violation(s) that need correction. These discrepancies or Contract violation(s) must be corrected by the next reporting period for payment adjustment purposes. Liquidated damages shall apply for the Contractor's failure to comply.
- e. Charges for extra security services that are not specified in the Service Schedule or not added to the Contract by a Supplemental Contract shall be submitted on a separate invoice and will be paid for by State purchase order, State procurement card, or other appropriate means. Charges for emergency services shall be invoiced in this manner.
- f. For final payment, the CONTRACTOR must submit a valid original tax clearance certificate "Certification of Compliance for Final Payment" (SPO Form-22). If the CONTRACTOR fails to provide a valid tax clearance certificate within one (1) month of the termination date of this Contract, the STATE shall assign the final payment in an amount not to exceed the tax liability to the Department of Taxation or the Internal Revenue Service. The debt owed to the Department of Taxation shall be offset first.

4. The CONTRACTOR shall be reimbursed at the accepted bid price per hour, which shall be the all-inclusive cost to the STATE, including all applicable taxes for providing the services specified. The total bid price shall be applicable to additional security services provided during or after normal work hours during the term of this Contract.
5. The STATE is not responsible for overtime and shall not pay for any overtime.
6. It is the sole responsibility of the CONTRACTOR to comply with section 103-55, HRS. The CONTRACTOR shall not be paid any reimbursement of retroactive pay. The STATE may consider requests for increases as a result of an increase to public officers and employees during the Contract period or during any option period. The CONTRACTOR's requests for an increase must meet the following criteria:



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

- a. At the time of the request, the CONTRACTOR's hourly wage rate must be less than the prevailing State wage rate; and
- b. The CONTRACTOR must or must have provided documentation to show that the hourly wage rate is in compliance with section 103-55, HRS, and that its employees are being paid no less than the known hourly wage rate of the equivalent State position.
- c. Request for an increase must be made in writing to the STATE on a timely basis. Request for increase for the initial Contract period must be made as soon as practicable after the State wage agreements are made public. Approved request will be retroactive to the date of increase for the State employees with adequate documentation that the CONTRACTOR provided its employees a wage increase.

Request for increase for an option period of the Contract must be made prior to the start of the option period.

5. The CONTRACTOR shall repair all damages caused by CONTRACTOR's equipment or employees to existing utilities and structures, such as water lines, electric conduits, sewer lines, and buildings. If such repairs are not completed within a reasonable time, STATE reserves the right to purchase services for the necessary repairs from the open market and to deduct all repairs costs from moneys due or may thereafter become due to CONTRACTOR. In the event money due to the CONTRACTOR is insufficient for the purpose, CONTRACTOR shall pay the difference upon demand by STATE.



Attachment – S3

STATE OF HAWAII

TIME OF PERFORMANCE

Contractor:

Complexes: **Kalakaua Homes (1062)** 1545 Kalakaua Avenue, Honolulu, Hawaii 96826
Makua Alii (1012) 1541 Kalakaua Avenue, Honolulu, Hawaii 96826
Paokalani (1036) 1583 Kalakaua Avenue, Honolulu, Hawaii 96826

1. The term of this Contract for Furnishing Security Services shall be for a twelve-month period, beginning on July 1, 2011 and ending on June 30, 2012.
2. No services shall be performed on this Contract prior to July 1, 2011.
3. The option to extend the Contract shall be at the sole discretion of the STATE. The Contract may be extended without the necessity of rebidding at the same rates as proposed in the original bid, unless price adjustments are made and approved as provided herein:

Initial term of Contract:	12 months
Length of each extension:	Up to twelve months; may be less than twelve months when it is in the best interest of the State
Maximum length of contract:	36 months

4. The initial period shall commence on the Contract start date. The following conditions must be met for an extension:
 - a. The CONTRACTOR experienced cost savings and has unexpended funds available that can be used to provide additional services; or
 - b. The STATE determines there is an ongoing need for the services and has funds to extend services, not to exceed 12 months for any extension period. The Contract extension shall be awarded at the same or comparable rates as the Primary Contract; and
 - c. A Supplemental Contract must be executed prior to expiration of the Primary Contract; and
 - d. The STATE may be required to obtain HUD approval in writing of the extension prior to execution of a Supplemental Contract, if federal HUD funds are to be used; and
 - e. The CONTRACTOR must obtain STATE approval in writing and a notice to proceed with the extension; and
 - f. The STATE has determined that the CONTRACTOR has satisfactorily provided services over the current Contract term; and
 - g. The necessary State and/or Federal Project funds are appropriated and allotted for an extension.



STATE OF HAWAII

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development ("DHRD").*

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

(Signature)

Denise M. Wise

(Print Name)

Executive Director

(Print Title)

(Date)

* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

NOTE: Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

2. By the Director of DHRD, State of Hawaii.

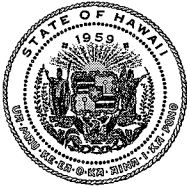
I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

(Signature)

(Print Name)

(Print Title, if designee of the Director of DHRD)

(Date)



STATE OF HAWAII
SPECIAL CONDITIONS

Contractor:

Sites: **Kalakaua Homes (1062)** 1545 Kalakaua Avenue, Honolulu, Hawaii 96826
 Makua Alii (1012) 1541 Kalakaua Avenue, Honolulu, Hawaii 96826
 Paokalani (1036) 1583 Kalakaua Avenue, Honolulu, Hawaii 96826

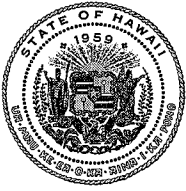
5. The CONTRACTOR shall maintain insurance acceptable to the STATE in full force and effect throughout the term of this contract. The policies of insurance maintained by the CONTRACTOR shall provide the following coverage.

<u>Coverage</u>	<u>Limit</u>
General Liability Insurance (occurrence form)	<u>\$2,000,000.00</u> combined single limit per occurrence for bodily injury and property damage.
Automobile Insurance covering all owned, non- owned and hired automobiles.	Bodily injury liability limits of <u>\$1,000,000.00</u> each person and <u>\$1,000,000.00</u> per accident and property damage liability limits of <u>\$1,000,000.00</u> per accident OR Combined single limit of \$2,000,000.00.
Workers Compensation as required by laws of the State of Hawaii.	Insurance to include Employer's Liability. Both such coverages shall apply to all employees of the CONTRACTOR and to all employees of sub-contractors in case any sub-contractor fails to provide adequate similar protection for all his employees.

a. The State of Hawaii, the Hawaii Public Housing Authority (HPHA), its elected and appointed officials, and employees shall be designated as additional insured with respect to operations performed under this Contract. The CONTRACTOR agrees to provide the STATE before the effective date of the Contract, certificate(s) of insurance necessary to satisfy the STATE that the insurance provisions of this Contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the STATE during the entire term of this Contract. The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including Supplemental Contracts. Upon request by the STATE, the CONTRACTOR shall furnish a copy of the policy or policies.

b. Failure of the CONTRACTOR to provide and keep in force such insurance shall be a material default under this Contract. The STATE shall be entitled to exercise any or all of the remedies provided in this Contract for default of the CONTRACTOR.

c. The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder or to fulfill the indemnification provisions and requirements of this Contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Contract.



STATE OF HAWAII
SPECIAL CONDITIONS

- d. The insurer shall notify the STATE in writing of any cancellation or change in provisions thirty calendar days prior to the effective date of such cancellation or change.
2. The CONTRACTOR shall have a permanent office on the island of Oahu from where it conducts business and where it will be accessible to telephone calls for complaints or requests that need immediate attention. An answering service is not acceptable.
3. The STATE shall monitor the performance of work on an ongoing basis through desk monitoring, site inspection and/or other appropriate methods.
4. Should the CONTRACTOR fail to comply with the requirements of the Contract, the STATE reserves the right to engage the services of another company to perform the services to remedy the defect or failure. The STATE may deduct such costs from monies due to the CONTRACTOR or may directly assess the CONTRACTOR.
5. In the event the CONTRACTOR fails, refuses, or neglects to perform the services in accordance with the requirements of the Invitation for Bids Number IFB PMB-2011-15 and the Contract, the STATE reserves the right to purchase in the open market a corresponding quantity of services, and to deduct the cost of procuring such services from the CONTRACTOR this cost and from any monies due or may thereafter become due the CONTRACTOR. In case money due to the CONTRACTOR is insufficient for the purpose, the CONTRACTOR shall pay the difference upon demand by the STATE. The STATE may also utilize all other remedies provided under the Contract and by law and rules.
6. In the there is a conflict between the general conditions from HUD 5370-C (05/2006) and general conditions AG-008 (4/15/2009) both of which are attached hereto, the more restrictive of the two shall apply.

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period

not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.
16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:
- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

(1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.

(2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or
 - (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 12/31/2011)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$100,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$100,000 - use Section II;** and
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$100,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$100,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

- (d) proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

- (a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

- (b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 12/31/2011)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

in the classification under this Contract from the first day on which work is performed in the classification.

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice;

(ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or

(iii) A training/trainee program that has received prior approval by HUD.

- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
- (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD).

- (ii) The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations.

- (iii) The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) **Withholding for unpaid wages and liquidated damages.**

HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.



- 03291 -

Instructions to Offerors Non-Construction

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors

Non-Construction Contract

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

(1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this contract; and

(2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or

(3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

(a) ☐ is, ☐ is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) ☐ is, ☐ is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) ☐ is, ☐ is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

(1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

(1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

(a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

(i) Award of the contract may result in an unfair competitive advantage;

(ii) The Contractor's objectivity in performing the contract work may be impaired; or

(iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

(d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Signature & Date:

Typed or Printed Name:

Title:

PART I

DEPARTMENT OF PERSONNEL SERVICES
STATE OF HAWAII

8.665

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Class Specifications
for the Class:SECURITY OFFICER IDuties Summary:

Patrols a regularly assigned area to enforce laws, rules and regulations for the protection and security of property and to maintain a safe environment; investigates violations, apprehends violators, issues citations, makes citizen arrests and reports unusual or irregular conditions; and performs other related duties as assigned.

Distinguishing Characteristics:

Positions in this class, after an initial orientation and training period, patrol assigned areas and enforce laws, rules and regulations for the protection and security of property and to maintain a safe environment for other workers, the public and others in the assigned area.

Positions enforce facility rules and regulations as well as general laws, respond to complaints, investigate suspicious circumstances, issue citations, detain, apprehend and/or arrest persons observed violating laws, rules and regulations; and prepare reports.

Positions in this class are uniformed and may carry firearms.

Examples of Duties:

Makes patrols, generally by motor vehicles, through assigned areas; watches for fire, trespassers or other irregularities; prevents acts of theft or vandalism; investigates suspicious persons or unusual incidents; maintains law and order on premises patrolled; checks the security of buildings, materials and equipment; responds to complaints and takes appropriate action; checks crafts or boats to determine whether they are properly secured at moorings; reports fire hazards, prevents the entry of unauthorized persons to restricted areas; takes into custody persons who violate laws, rules and regulations and detains them for military or civil police authorities and/or effectuates a citizen's arrest if necessary; serves eviction notices; directs traffic within and near parking zones in the assigned patrol area and enforces traffic rules and regulations; issues citations for violations of traffic rules and regulations; recommends changes in traffic rules and regulations when necessary; may carry and use firearms in emergencies; prepares activity and investigation reports; and may occasionally instruct or oversee the work of others.

Knowledge and Abilities Required:

Knowledge of: The general duties of a security guard.

Ability to: Learn law enforcement techniques pertaining to the protection and security of property; methods of maintaining law and order within premises patrolled; understand and carry out oral and written instructions; explain to others and apply laws, rules and regulations; size up situations and people accurately and adopt an effective course of action; get along well with others; learn to use and care for firearms; and prepare written reports.

This is an amendment to the class specification for the class SECURITY OFFICER I approved on January 17, 1956.

Effective Date: July 1, 1979

DATE APPROVED: 12/1/82

/s/ Clement L. Kamalu
for DONALD BOTELHO
Director of Personnel Services

Minimum Qualification Specifications
for the Classes:

SECURITY OFFICER I, II, III

Experience Requirements:

Applicants must have had the kind and quality of experience described below, and in the amounts shown in the following table, or any equivalent combination of training and experience:

Class Title	General Exp (Yrs)	Spclzd Exp (Yrs)	Supvy Exp (Yrs)	Total Exp (Yrs)
SECURITY OFFICER I	1	1	0	2
SECURITY OFFICER II	1	2	*	3
SECURITY OFFICER III	1	2	1	4

General Experience: Work experience requiring the ability to read, comprehend and apply written directions, or a high degree of verbal skills or work which involved dealing with people. This requirement may be met from part-time and unpaid work. There must however, be evidence that participation was on a continuous basis but not necessarily on a full-time normal work basis. Graduation from high school may be substituted for the required general experience.

Specialized Experience: Progressively responsible work experience in the enforcement of security regulations or in the protection of property.

Supervisory Experience: Experience in directing or supervising personnel in security duties. This experience must have included responsibility for scheduling and assigning the work of subordinates; instructing employees in the proper method of performing the work; and keeping records of work activities.

*For the Security Officer II level, applicants must have demonstrated evidence of supervisory aptitude. Supervisory aptitude is the demonstration of aptitude or potential for the performance of supervisory duties through successful completion of regular or special assignments which involve some supervisory responsibilities or aspects; by detail to supervisory positions; by completion of training courses in supervision accompanied by application of supervisory skills in assignments; or by favorable appraisals of a supervisor indicating the possession of supervisory potential.

Substitutions Allowed:

1. Successful completion of a reserve police training course which led to the issuance of a badge as Reserve Police Officer may be substituted for one year of Specialized Experience.
2. Successful completion of a two-year or four-year program in police science from an accredited college or university may be substituted for one year of the Specialized Experience.
3. Excess specialized experience may be substituted for the General Experience on a year-for-year basis.

Quality of Experience:

Possession of the required number of years of experience will not in itself be accepted as proof of qualification for a position. The applicant's overall experience must have been of such scope and level of responsibility as to conclusively demonstrate that he/she has the ability to perform the duties of the position for which he/she is being considered.

License Required:

Possession of a license to drive in the State of Hawaii.

Selective Certification:

Specialized knowledge, skills and abilities may be required to perform the duties of some positions. In such positions, certification may be restricted to eligibles who possess the pertinent experience and/or training required to perform the duties of the position.

Agencies requesting selective certification must show the connection between the kind of training and/or experience on which they wish to base selective certification and the duties of the position to be filled.

Tests:

Applicants may be required to qualify on an appropriate examination.

Physical and Medical Requirements:

Applicants must be physically able to perform, efficiently and effectively, the essential duties of the position with or without reasonable accommodation.

Any condition that would cause applicants to be a hazard to themselves or others is cause for disqualification.

Any disqualification under this section will be made only after a review of all pertinent information including the results of the medical examination, and requires the approval of the Director of Human Resources Development.

Mental/Emotional Requirements:

All applicants must possess emotional and mental stability appropriate to the job duties and responsibilities and working conditions.

This is an amendment to the minimum qualification specification for the classes SECURITY OFFICER I, II, III, approved on June 28, 1990.

DATE APPROVED: 1/25//2007

Marion Young
for MARIE G. LADERTA
Director of Human Resources Development

State of Hawaii
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
SALARY SCHEDULE

Effective Date: 07/01/2008
Bargaining Unit: 03 White Collar, Non-supervisor
04 White Collar, Supervisor

	Step A	Step B	Step C	Step D	Step E	Step F	Step G	Step H	Step I	Step J	Step K	Step L
SR12	ANN	30,036	31,212	32,424	33,756	35,064	36,516	37,968	39,480	41,040	42,684	44,412
	MON	2,503	2,601	2,702	2,813	2,922	3,043	3,164	3,290	3,420	3,557	3,701
	8HR	115.52	120.08	124.72	129.84	134.88	140.48	146.00	151.84	157.84	164.16	170.80
	HRLY	14.44	15.01	15.59	16.23	16.86	17.56	18.25	18.98	19.73	20.52	21.35
SR13	ANN	31,212	32,424	33,756	35,064	36,516	37,968	39,480	41,040	42,684	44,412	46,176
	MON	2,601	2,702	2,813	2,922	3,043	3,164	3,290	3,420	3,557	3,701	3,848
	8HR	120.08	124.72	129.84	134.88	140.48	146.00	151.84	157.84	164.16	170.80	177.60
	HRLY	15.01	15.59	16.23	16.86	17.56	18.25	18.98	19.73	20.52	21.35	22.20
SR14	ANN	32,424	33,756	35,064	36,516	37,968	39,480	41,040	42,684	44,412	46,176	48,048
	MON	2,702	2,813	2,922	3,043	3,164	3,290	3,420	3,557	3,701	3,848	4,004
	8HR	124.72	129.84	134.88	140.48	146.00	151.84	157.84	164.16	170.80	177.60	184.80
	HRLY	15.59	16.23	16.86	17.56	18.25	18.98	19.73	20.52	21.35	22.20	23.10
SR15	ANN	33,756	35,064	36,516	37,968	39,480	41,040	42,684	44,412	46,176	48,048	49,932
	MON	2,813	2,922	3,043	3,164	3,290	3,420	3,557	3,701	3,848	4,004	4,161
	8HR	129.84	134.88	140.48	146.00	151.84	157.84	164.16	170.80	177.60	184.80	192.08
	HRLY	16.23	16.86	17.56	18.25	18.98	19.73	20.52	21.35	22.20	23.10	24.01
SR16	ANN	35,064	36,516	37,968	39,480	41,040	42,684	44,412	46,176	48,048	49,932	51,936
	MON	2,922	3,043	3,164	3,290	3,420	3,557	3,701	3,848	4,004	4,161	4,328
	8HR	134.88	140.48	146.00	151.84	157.84	164.16	170.80	177.60	184.80	192.08	199.76
	HRLY	16.86	17.56	18.25	18.98	19.73	20.52	21.35	22.20	23.10	24.01	24.97
SR17	ANN	36,516	37,968	39,480	41,040	42,684	44,412	46,176	48,048	49,932	51,936	54,012
	MON	3,043	3,164	3,290	3,420	3,557	3,701	3,848	4,004	4,161	4,328	4,501
	8HR	140.48	146.00	151.84	157.84	164.16	170.80	177.60	184.80	192.08	199.76	207.76
	HRLY	17.56	18.25	18.98	19.73	20.52	21.35	22.20	23.10	24.01	24.97	25.97
SR18	ANN	37,968	39,480	41,040	42,684	44,412	46,176	48,048	49,932	51,936	54,012	56,172
	MON	3,164	3,290	3,420	3,557	3,701	3,848	4,004	4,161	4,328	4,501	4,681
	8HR	146.00	151.84	157.84	164.16	170.80	177.60	184.80	192.08	199.76	207.76	216.08
	HRLY	18.25	18.98	19.73	20.52	21.35	22.20	23.10	24.01	24.97	25.97	27.01
SR19	ANN	39,480	41,040	42,684	44,412	46,176	48,048	49,932	51,936	54,012	56,172	58,440
	MON	3,290	3,420	3,557	3,701	3,848	4,004	4,161	4,328	4,501	4,681	4,870
	8HR	151.84	157.84	164.16	170.80	177.60	184.80	192.08	199.76	207.76	216.08	224.80
	HRLY	18.98	19.73	20.52	21.35	22.20	23.10	24.01	24.97	25.97	27.01	28.10
	ANN	39,480	41,040	42,684	44,412	46,176	48,048	49,932	51,936	54,012	56,172	60,744
	MON	3,290	3,420	3,557	3,701	3,848	4,004	4,161	4,328	4,501	4,681	5,062
	8HR	151.84	157.84	164.16	170.80	177.60	184.80	192.08	199.76	207.76	216.08	233.60
	HRLY	18.98	19.73	20.52	21.35	22.20	23.10	24.01	24.97	25.97	27.01	29.20

RENTAL AGREEMENT

THIS RENTAL AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the Housing and Community Development Corporation of Hawaii, a public body and a body corporate and politic of the State of Hawaii, hereinafter referred to as "Management", and _____, hereinafter referred to as "Tenant",

WITNESSETH THAT:

Management rents to Tenant the dwelling unit described below for the term, at the rental, and under the covenants and conditions stated herein.

1. DESCRIPTION OF THE DWELLING UNIT:

Address: _____, being a _____ bedroom unit in Building No. _____.

2. TERM AND RENTAL: The term of this Rental Agreement is for 12 months effective _____ (occupancy date) to _____. The monthly rent effective _____ is \$ _____ and shall be due and payable in advance on the first day of each calendar month. This Rental Agreement is and shall be renewed annually thereafter. This monthly rent will remain in effect unless it is changed as provided in Paragraph 6 below or this Agreement is terminated. If the tenancy ends on a date other than the last day of a month, the rent shall be prorated to the last day of the tenancy. In addition to the monthly rent as specified, payment shall include amount of utility charges based on the current rate charged by Management for gas and/or electricity for utility consumption in excess of the allowances provided in Paragraph 10 (g) and other incurred charges. There shall be allowed a grace period of seven (7) business days for payments due. A tenant receiving welfare financial benefits authorizes Management to draw monthly rental payments directly from Tenant's EBT or bank account upon thirty (30) days written notice to Tenant.

3. SECURITY DEPOSIT: Security Deposit to be paid by Tenant shall be \$150.00 or one month's rent whichever is lower. The Security Deposit has not been paid or received as rental and shall not be treated by Tenant as a payment of or offset against rental. The Security Deposit shall be returned if Tenant performs in accordance with this Rental Agreement and surrenders the dwelling unit and all keys thereto and pays for all damages at the expiration of this Rental Agreement. If Tenant shall default in the performance of Tenant's covenants including the payment of rent, then and without waiving any other remedies available to Management, the Security Deposit shall be applied toward satisfaction of the rent, damages, including loss or removal of property, cleaning of the premises and the restoration of the premises due to damage caused by the Tenant. Any refund under this Paragraph should be made to Tenant within fourteen (14) days after the termination of this Rental Agreement. Security Deposit is determined and paid at initial occupancy of Tenant and shall remain the same throughout occupancy.

4. USE AND OCCUPANCY: Tenant shall have the right to exclusive use and occupancy of the dwelling unit subject to the following:

(a) Limited Occupancy: Occupancy shall be restricted to the Tenant and the members of the Tenant's household who are listed on the Tenant's most current household composition declaration form(s) as used by Management as updated to show changes in the Tenant's household.

(b) Guests and Visitors:

(1) Tenant may accommodate Tenant's guests and visitors without prior written Management consent on a limited basis not to exceed one (1) night. For periods exceeding one (1) night, prior written Management consent is required.

(2) Tenant shall be fully responsible for the conduct of Tenant's guests and visitors while they are on the Project premises.

(c) Tenant's failure to obtain prior consent of Management as required by this Section for use and occupancy of dwelling unit may result in termination of this Agreement.

5. ELECTRICITY, GAS, AND WATER

(a) For Management-furnished utilities, Management shall pay for and furnish to Tenant water, gas and electricity in accordance with the applicable schedule of utility allowances. For Tenant-purchased utilities, Management shall provide an allowance in dollars for water, gas and electricity in accordance with the applicable schedules. Said schedules shall be posted in the Project Office (See Paragraph 10 (g)).

(b) Management shall charge Tenant for the consumption of excess gas and electricity as provided in the schedule of utility allowances and charges for excess utilities as posted in the Project Office. These charges shall be due and collectable the month in which the charge is made. Management shall accept rental payments without regard to such charges owed by Tenant if Tenant has filed or has the right to file a grievance under Management's Grievance Procedure.

6. ELIGIBILITY REEXAMINATIONS AND RENTAL ADJUSTMENTS:

(a) Eligibility Reexaminations. Tenant shall participate in reexaminations in accordance with Rules and Regulations available in the Project Office. Management will notify Tenant when a reexamination of the family income and composition is required to verify eligibility, dwelling size and rent to be paid. Reexaminations initiated by Management will normally occur annually but they may be scheduled earlier or later depending upon special circumstances described in the Rules. Immediately following completion of the reexamination, Tenant will be provided written notification concerning Tenant eligibility status and any change to be made in the rent or size of the unit occupied.

(b) Interim Re-determination of Rent.

(1) At any time between required reexaminations, Tenant may initiate a re-determination of rent when there is a change in Tenant family circumstances (such as a decrease in income) which will decrease Tenant annual income for rent as described in the schedule of rents available in the Project Office. In the event rent is decreased in accordance with this provision, Tenant agrees to report any change in Tenant family circumstances which occurs prior to the next regular reexamination, which will increase Tenant annual income and rent, will be appropriately adjusted. Tenant shall report all changes within ten (10) business days.

(2) At any time between required reexaminations, Management may initiate a re-determination of rent to correct errors or to investigate alleged undercharging because Tenant has submitted false information or has withheld valuable information or has made willful misstatements.

(c) Effective Date of Rent Adjustments.

(1) Whenever there is a change in the monthly rent, Management will deliver to or mail to Tenant, a written notice reflecting change.

(2) Rent adjustments resulting from Management initiated reexaminations in Paragraph 6 (a) above will be effective the first of the month of the established reexamination date.

(3) Interim decreases in rent resulting from a re-determination as provided in Paragraph 6 (b) above will be effective the first of the month following the month in which a change, which justifies a decrease, is reported to Management. Decreases will be made retroactive only to correct an error.

- (4) Interim increases resulting from a re-determination under Paragraph 6 (b) above will be effective the first of the second month following the month in which the change occurs. Retroactive rent increases will be made in case of failure to report changes, which would have resulted in rent increases, as agreed in Paragraph 6 (b) (1). Retroactive increases may also be made if Tenant has been undercharged due to an error or misrepresentation on the part of Tenant or any occupant of the dwelling unit.
 - (5) When Management re-determines the amount of rent payable by the Tenant or determines that the Tenant must transfer to another unit based on family composition, Management shall notify the Tenant of Management's specific grounds of the determination and if Tenant does not agree with the determination, Tenant has the right to request a hearing under the Grievance Procedure.
7. MANAGEMENT'S OBLIGATIONS: Management agrees to supply and maintain fit premises. Management shall, at all times during the term of this Rental Agreement, perform the following:
 - (a) Maintain the Project in a decent, safe, and sanitary condition;
 - (b) Comply with all applicable laws, rules, regulations, and ordinances of governmental authorities governing maintenance, construction, use, or appearance of the dwelling unit and the premises of which it is a part, noncompliance with which would have the effect of endangering health or safety;
 - (c) Make all repairs and arrangements necessary to put and keep the premises in a habitable condition;
 - (d) Maintain all electrical, plumbing, and other facilities and appliances supplied by Management in good working order and condition, subject to reasonable wear and tear;
 - (e) Provide and maintain appropriate receptacles and conveniences (except containers for the exclusive use of an individual Tenant family) for the removal of normal amounts of rubbish and garbage and arrange for the frequent removal of such waste materials; and
 - (f) Keep Project buildings, facilities and areas not otherwise assigned to the Tenant for maintenance and upkeep in a clean and safe condition.
8. TENANT'S OBLIGATIONS: Tenant shall, at all times during the term of this Rental Agreement, perform the following obligations:
 - (a) With prior written consent of Management, members of the household may engage in legal profit making activities in the dwelling unit, where Management determines that such activities are incidental to primary use of the unit for residence by members of the household;
 - (b) Report changes in family income, assets, and employment and household composition as required by Management to determine Tenant's rental rate and eligibility for continued occupancy; changes shall be reported within ten (10) business days;
 - (c) Not permit any person to occupy the dwelling unit other than persons listed on the most current household composition form(s), except that with prior written consent of Management, a foster child/adult or a live-in aide may reside in the unit;
 - (d) Observe all applicable laws, rules, regulations, and ordinances of governmental authorities that pertain to and establish standards for residential occupants;
 - (e) Abide by the Project Rules and all applicable rules, regulations, and supplemental agreements that shall be available at the Project Office and incorporated by reference herein;
 - (f) Pay for repair of all damages to the dwelling unit or to any appliances or equipment furnished by Management, in excess of ordinary wear and tear, and for any repairs to the Project buildings, facilities, or common areas, required because of the wrongful act or negligence of Tenant, Tenant's household, guests, or visitors;
 - (g) Not commit or suffer any damage to the dwelling unit, any act that shall cause increase in the premiums for fire and other casualty insurance on the building, or any noise or nuisance to the disturbance of other Tenants of the Project;
 - (h) Not make any alterations or additions to the dwelling unit, including the installation of any additional locks, bolts, screws or other fixtures, or any decorations therein which shall damage or deface the doors, windows, walls, or floors without obtaining Management's prior written consent;
 - (i) Not assign this Agreement or sublet the dwelling unit;
 - (j) Peaceably surrender the dwelling unit to Management in good order and condition, except for ordinary wear and tear, and return all keys thereto upon the termination of the tenancy for any cause;
 - (k) Keep the dwelling unit and such other areas as may be assigned to Tenant for Tenant's exclusive use in a clean, sanitary and safe condition;
 - (l) Dispose of all ashes, garbage, rubbish and other waste from the premises in a sanitary and safe manner;
 - (m) Use only in a reasonable manner all electrical, plumbing, sanitary, ventilating, air conditioning and other facilities and appurtenances including elevators;
 - (n) Refrain from and cause Tenant household members and guests to refrain from destroying, defacing, damaging or removing any part of the premises or Project;
 - (o) Conduct himself and cause other persons who are on the premises with Tenant consent to conduct themselves in a manner which will not disturb Tenant neighbors' peaceful enjoyment of their accommodations and will be conducive to maintaining the Project in a decent, safe and sanitary condition, and not loiter or drink alcoholic beverages in the project's common areas as defined in the Project Rules;
 - (p) Assure that Tenant, any member of the household, a guest or another person under Tenant control, shall not engage in:
 - (1) Any criminal activity or alcohol abuse that threatens the health, safety or right to peaceful enjoyment of Management's public housing premises by other public housing residents or neighboring residents or employees of Management, or
 - (2) Any drug-related criminal activity on or off such premises.

Management will immediately seek termination of the Rental Agreement if it determines that any member of the household has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing. Any drug-related criminal activity in violation of this section shall be cause for termination of tenancy and for eviction from the unit. Management has the discretion to consider all the circumstances and effects of the violation.
 - (q) Agree to transfer to an appropriate size dwelling unit based on family composition, upon notice by Management that such a dwelling unit is available;

- (r) Not keep or permit to be kept any animal, as a pet or otherwise, in or about the dwelling unit, except as provided by law and, in all other housing, in accordance with the Pet Policy which is incorporated by reference;
 - (s) Refrain from storing any unlicensed, inoperable or abandoned vehicle on the Project premises; and if the vehicle is required to be towed by Management, upon billing, Tenant shall pay for any charges incurred by Management;
 - (t) Comply with all obligations imposed upon Tenants by applicable provisions of building and housing requirements of applicable building codes, housing codes, health codes, materially affecting health and safety;
 - (u) Comply with all HUD regulations pertaining to the requirement that all adult household members, unless exempt, participate for at least eight hours per month in community service or an economic self-sufficiency program; non-compliance will result in denial of lease renewal; and
 - (v) Must be physically present and residing in the dwelling unit.
9. ENTRY OF PREMISES:
- (a) Management shall, upon reasonable advance notification to the Tenant, be permitted to enter the dwelling unit during regular business hours to examine the condition thereof, or to make necessary improvements or repairs or to show the premises for re-leasing. A written statement specifying the purpose of the entry delivered to the premises at least two (2) days before such entry shall be considered reasonable advance notification;
 - (b) Management may enter the premises at any time without advance notification when there is reasonable cause to believe that an emergency exists;
 - (c) In the event that the Tenant and all adult members of Tenant household are absent from the premises at the time of entry, Management shall leave on the premises a written statement specifying the date, time and purpose of entry prior to leaving the premises.
10. MUTUAL COVENANTS: Management and Tenant mutually agree as follows:
- (a) Tenant acknowledges receipt of a copy of the Project Rules and agrees that the Project Tenant Association by majority vote of all Tenants of the Project and with approval of Management may amend such Rules from time to time. Any such amendment shall be effective ten (10) days after a copy thereof is conspicuously posted in the Project Office and delivered to Tenant or mailed to Tenant at the address of the dwelling unit;
 - (b) Any notice required hereunder to Tenant shall be sufficient if delivered or mailed to Tenant. If Tenant is visually impaired, Tenant may request all notices in an accessible format. Notice to Management shall be sufficient if personally presented in writing to Management during regular business hours at the Project Office, or mailed to the Project Manager;
 - (c) Management and Tenant or Tenant's representative shall jointly inspect the dwelling unit on or before the occupancy date. Management shall give a written statement describing the condition of the dwelling unit and its equipment. The statement shall be signed by the Tenant, and a copy of the statement shall be retained by Management in the Tenant's folder. Upon termination of this Agreement, Management will inspect the dwelling unit and give the Tenant a written statement of the charges, if any, for which the Tenant is responsible. The Tenant or Tenant representative shall be notified of the date and time for the inspection and may participate except, if the Tenant vacates without notice to Management;
 - (d) Tenant shall keep Tenant property, including automobile, household furniture, personal effects and valuables in the dwelling unit and on Project premises at Tenant risk, and Management shall not be liable for loss or any damage thereto by theft, fire, water or any other cause;
 - (e) Management shall not be liable to Tenant or any other person for the temporary failure of the gas, electric or water service, or from failures or breakdown of any appliance or equipment, not caused by any act or omission of Management. If any of the electrical and other appliances and equipment furnished for the use of Tenant shall become unserviceable, Management shall have a reasonable time after notification to determine whose responsibility it is and have the same repaired or replaced;
 - (f) In the event the premises are damaged to the extent that conditions are created which are hazardous to the life, health or safety of Tenant, the following provisions shall apply:
 - (1) Tenant shall immediately notify Management of the damage;
 - (2) Management shall be responsible for repair of the unit within forty-eight (48) hours, provided that if the damage was caused by Tenant, Tenant's household member or guests, reasonable cost of repairs shall be charged to Tenant;
 - (3) Management shall offer standard alternative accommodations, if available, in circumstances where necessary repairs cannot be made within forty-eight (48) hours; and
 - (4) In the event that repairs are not made or alternative accommodations are not provided within forty-eight (48) hours, Tenant may request abatement of rent in proportion to the seriousness of the damage and loss in value as a dwelling which proportion shall be determined by mutual agreement of Tenant and Management or through the Grievance Procedure, except that no abatement of rent shall occur if Tenant rejects the alternative accommodation or if the damage was caused by Tenant, Tenant's household or guests;
 - (g) Schedules of special charges for services, repairs and utilities and rules and regulations that are incorporated by reference herein shall be publicly posted in a conspicuous manner in the Project Office and shall be furnished to Tenant upon request. Such schedules and rules and regulations may be modified from time to time and Management shall give at least thirty (30) days written notice to Tenant setting forth the proposed modifications, if applicable to Tenant, and the reasons therefore. Management shall provide Tenant an opportunity to present written or oral comments, which shall be taken into consideration prior to proposed modifications becoming effective. A copy of such notice shall be:
 - (1) Delivered directly or mailed to Tenant; or
 - (2) Posted in at least three (3) conspicuous places within each structure or building in which the affected dwelling unit is located, as well as in a conspicuous place in the Project Office;
 - (h) Acceptance of payment by Management shall not be deemed a waiver by it or of any prior breach by Tenant;
 - (i) If the rent or any amount hereunder is not paid within ten (10) days of lease termination date, Management may employ a collector and/or attorney to collect the same, and Tenant will pay a reasonable attorney's fee or commission not exceeding 25% of the unpaid principal balance together with all costs and interest at the maximum percentage allowable by State Law per annum until the amount is paid in full;

- (j) Tenant shall, before quitting the dwelling unit, give Management written notice of intention to do so at least twenty-eight (28) days before vacating the unit. Management shall give thirty (30) days notice to Tenant before requiring him to vacate the dwelling unit for any good cause other than failure on the part of Tenant to observe or perform any covenant herein;
- (k) It shall be good cause for Management to terminate this Agreement if:
- (1) Tenant fails to provide family income, assets, employment and composition information and documentation to enable Management to determine Tenant's rental rate and the eligibility of Tenant for continued occupancy;
 - (2) Tenant's household no longer conforms to the occupancy limits, established by Management for the unit occupied by Tenant and Tenant refuses to move to the first appropriate size unit offered;
 - (3) Tenant refuses to move for reasons including but not limited to for health and safety, repair, abatement, construction or renovation of unit;
 - (4) Tenant is ineligible for continued occupancy;
 - (5) At the time of admission, reexamination, interim, or at any other time Tenant has submitted false information or has withheld valuable information or has made willful misstatements;
 - (6) Tenant repeatedly violates any material term of this Rental Agreement, including chronic failure to pay rent on time and in full when due; and
 - (7) Tenant fails to accept Management's offer of a revision to the existing Rental Agreement. Such revision must be on a form adopted by the agency in accordance with regulations. Management must give Tenant written notice of the offer of revision at least sixty (60) calendar days before it is scheduled to take effect. The offer must specify a reasonable time limit within that period for acceptance by the Tenant.
- (l) In case of any default by Tenant in the payment of rental or the observance and performance of any covenant herein, Management shall notify Tenant of the default in writing and shall specify the time within which the default and noncompliance must be remedied and corrected. If Tenant fails to remedy and correct the default and noncompliance within the time specified in the notice, Management may terminate this Rental Agreement; however, Management shall not terminate or refuse to renew this Rental Agreement other than for serious or repeated violation of material terms of this Rental Agreement such as failure to make payments due under this Rental Agreement or to fulfill Tenant's obligations set forth herein or for other good cause. Management shall give written notice of proposed termination of this Rental Agreement of:
- (1) Fourteen (14) days in the case of failure to pay rent;
 - (2) A reasonable period of time considering the seriousness of the situation (but not to exceed thirty [30] days): (1) If the health or safety of other residents, Management's employees, or persons residing in the immediate vicinity of the premises is threatened; (2) If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or (3) If any member of the household has been convicted of a felony;
 - (3) Thirty (30) days in all other cases. The notice of proposed termination shall state reasons for the proposed termination of this Rental Agreement, shall inform Tenant of Tenant's right to make such reply as Tenant may wish, of Tenant's right to request a hearing in accordance with the Grievance Procedure, and Tenant's right to examine and copy at Tenant's expense, Management's documents directly relevant to the termination or eviction. Tenant shall be entitled to a hearing in accordance with the Grievance Procedure before the termination of this Rental Agreement becomes final. Management's repossession of the dwelling unit shall be without prejudice to any other remedy or right of action for arrears of rent and other breach of covenant or condition;
 - (4) In the event that Management seeks to terminate Tenant's Rental Agreement, Tenant must be afforded the opportunity for a pre-eviction hearing in accordance with the Grievance Procedure. The notice of termination of the Rental Agreement shall inform the Tenant of Tenant's right, before a hearing or trial, to request, examine, and copy, at Tenant's expense, Management's documents which are directly relevant to the termination of tenancy. If Management does not make the documents available to Tenant's examination upon request, Management may not proceed with the termination of Tenant's Rental Agreement.
- (m) Management shall not be liable to Tenant or to any occupant of the dwelling unit for it's employee(s), agent(s), visitor(s) or invitee of any or them, for any loss or damage caused by or arising out of acts, omissions or neglect of Tenant or any occupant of the dwelling unit, and Tenant shall hold Management harmless from any and all claims for such loss or damage;
- (n) All grievances arising under this Agreement shall be processed as described in Management's Grievance Procedure in effect at the time the grievance is filed. The current procedure is available in the Project Office and is incorporated herein by reference;
- (o) Any modification of this Rental Agreement shall be accomplished by a written supplemental rental agreement executed by both parties except for adjustment in rent under Paragraph 6;
- (p) This Rental Agreement includes the following documents attached hereto and incorporated by reference herein:
- | | |
|---------------------------------|-----------|
| (1) <u>Project Rules</u> | (4) _____ |
| (2) <u>Grievance Procedures</u> | (5) _____ |
| (3) <u>Pet Policy</u> | (6) _____ |
- (q) In case this Rental Agreement is executed by more than one person as Tenant, the provisions herein shall bind them jointly and severally.

IN WITNESS WHEREOF, the parties hereto have executed this Rental Agreement in duplicate as of day and year first above written.

HOUSING AND COMMUNITY DEVELOPMENT
CORPORATION OF HAWAII

By _____
Its Project Manager

Tenant

Tenant

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